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Morals.
3528.3

The Gift of
Rev. Loammi F. Ware,
of
Boston.
(Class of 1850.)

Rec'd. Oct. 21,
1861.

WHAT IS

TRUE CIVILIZATION,

OR

MEANS TO SUPPRESS THE PRACTICE OF DUELLING,

TO PREVENT,

OR TO PUNISH, CRIMES,

AND

TO ABOLISH THE

PUNISHMENT OF DEATH.

BY JAMES SEGA, L.L.D.
FROM THE UNIVERSITY OF PAVIA.

Debemus autem nos firmiores imbecilitates infirmorum sustinere, et non nobis placere.——Ep. B. Pauli ad Romanos Caput xv.

BOSTON.
WILLIAM SMITH—PRINTER.
1830.

1861. Oct. 21.

District of Massachusetts.....to wit:

DISTRICT CLERK'S OFFICE.

S.L. BE IT REMEMBERED, That on the eleventh day day of October, A. D. 1830, in the fifty-fifth year of the Independence of the UNITED STATES of America, JAMES SEGA of the said District, has deposited in this Office the Title of a Book, the Right whereof he claims as Proprietor, in the words following, *to wit:*

"What is True Civilization; or, Means to suppress the practice of Duelling, to prevent, or to punish Crimes, and to abolish the Punishment of Death. By JAMES SEGA, L L.D. From the University of Pavia.—Debemus autem nos firmiores imbecilitates infirmiorum sustinere, et non nobis placere.—Ep. B. Pauli ad Romanos Caput xv."

In conformity to the Act of the Congress of the United States, entitled "An Act for the encouragement of learning, by securing the copies of Maps, Charts and Books, to the Authors and Proprietors of such copies, during the times therein mentioned:" and also to an Act entitled "An Act supplementary to an Act, entitled, an Act for the encouragement of learning, by securing the copies of Maps, Charts and Books to the Authors and Proprietors of such copies during the times therein mentioned; and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints."

JNO. W. DAVIS,

Clerk of the District of Massachusetts.

GEORGE M. DALLAS, Esq.

PHILADELPHIA.

DEAR SIR,

The earliest circumstances of one's life engender the destiny, whence the events are hurried wherein he is to act! Subsequent misfortunes indelibly engrave in a human heart the effects of those circumstances, feelings and everlasting recollections! Wherefore I, who, driven from my country, far from all that endeareth life, was brought personally to witness the evils, which society draws upon itself, should hardly be expected to tread, unconscious and unmoved, the soil moistened with the tears of suffering humanity.

Study, long meditations, the greatest trials, feelings and chagrins, have caused the thoughts of my childhood, and those of manhood to be embodied into the present work. Will you, regarding not the little worth of the present, accept the good will of the donor, and permit this work to acknowledge your favors, and bear

your name? A heavenly gift is gratitude! Wretched he! whose heart swells not with this noblest feeling! Gratitude, like the fluid, which brings into contact the whole physical creation, unites moral beings through benefits, virtues, and misfortunes!—I shall even love exile, if it has enabled me to indulge this most cherished feeling, while I offer to our fellow-men my best wishes for their happiness, and my best exertions for the attainment of it.

With great regard and sincerity, yours

JAMES SEGA.

PHILADELPHIA, SEPT. 6, 1830.

MY DEAR SIR,

Pressing engagements have prevented my answering your letter of the 29th ultimo, before. I am not entitled to the kind dedication you propose giving to your valuable work. That I wish it every success, and you every honor and support, is certain: —but the trifling services I have been able to render do not merit so flattering a reward.

I am happy to hear that your progress, although not such as it ought to be, is adequate to the direct expenses of your work. If it be in my power to be useful to you here, pray command me.

I am respectfully and truly yours.

G. M. DALLAS.

JAMES SEGA, ESQ.

TO THE READER.

The increase of population and the multiplication of wants, lead to the invention of useful arts; the indefinite opinions upon the uses of a thing, or upon its existence lead to discoveries: thus the ideas individually expressed upon the several elements, which would compose a whole, that should, or is to exist, engender a conception. A conception is the result of the ideas of all people, within the circle of one's intercourse, condensed, melted, and moulded to a shape not existing before, by means of his imagination; wherefore it requires a mind not particularly engaged upon any subject.

This, kind Reader, is my apology for having written, even in a foreign language. In the solitude of exile, I have been enabled to gather and react the ideas of my contemporaries,—and my having distributed them to a work, rather than betray any vanity of mine, should bear witness to the feeling condition wherein I wrote; because the endear-

ments of life, the duties of man, and the service of one's country, engaged, in no measure, my mind!

As to none but to very good people, endowed with feelings, the present work may be interesting, I apologize not for the particular collocations of words, made use of to represent the thoughts, embodied in a work. I thank you, for the favorable opinion, you entertain of me; I wish you all happiness; and I will give my warmest gratitude to Heaven, if my heart has dictated to me the language of a better one, Yours!

PROEM.

To undertake in any way, that labour, which wise and learned men have not undertaken, either because they did not deem it necessary, or because they did not think of it, ought always to deserve praise, though he, who desires to sustain the labour of so doing, should, in a great degree, want the knowledge and diligence necessary to the undertaking.

Some one having observed, that certain stars were seen at different places in the morning and in the evening; and then that other stars made their appearance at certain periods of time, and kept their relative position to the sun and to each other, opened the way to the examination of the system of the world; hence to the science of astronomy:

thus the ideas, which are expressed by a man of ordinary talents upon the mode of having a thing done, or not done, may, if reacted by the great intellects, who will compare those ideas with their own, and with those of other men of genius, open mechanically the way to the method of operations, which circumstances require.

If this labour were undertaken for the universal benefit of men, it appears to me, that he, who dared the first to attempt it, will always be worthy of praise, although he possessed not the necessary ability to bring it to an end: because the time will come, in which another of greater ability, and more ingenuity, wishing to prosecute the work already begun, will bring it to a useful perfection, to practibility.

That duelling is a practice, which casts a stain upon our present civilization, nobody doubts; yet no one, either because he does not think it a great evil, or because he despairs of correcting it, has been willing, by ascending to the origin of this ferocious practice, to attempt to trace the causes, which still preserve so much ferocity in the minds, although polished, of the present generation.

Two general causes might be assigned for this practice: the one is the carelessness of those, who compose either on account of birth, knowledge,

or purity of manners, the best part of the people; the other, the little consideration, in which, *contrary to the practice of ancient republics*, instructers in general are held.

If you do not hold in great consideration those, who give themselves to guide and instruct young people, it will, according to human nature, happen, that no *worthy man* will apply himself to it; because nobody, unless forced by circumstances, will do a thing, by which he will be held *in less consideration*, than he thinks himself worthy of. And if *worthy men* cannot make themselves *esteemed* in such pursuits, it will *necessarily happen* that those, who will rather aim *at gain* than *esteem*, will be intrusted with the education of youth. And, if your sons are educated by mercenary people, how can you expect to have a right to complain, if they, learning sciences from him, who knows not the *manners of a gentleman*, have learnt his *rude and vulgar manners*?

The Florentine Secretary, reasoning upon the different effects, which the disputes between the nobles and the people caused in Rome, and in Florence, attributes them to the different motives for which the people fought in those republics: since the Roman people fought to share with the nobles the government of the republic, and the Florentine to exclude the nobles and be alone in the government. "From this," says Macchiavelli,

"it happened, that in the victories of the people, the city of Rome became more virtuous; because the people, being eligible as well as the nobles to the administration of the Magistracies, armies, and the government of the republic, filled themselves with the virtue, possessed by the nobles, and that city, with the increase of virtue, increased in power. But in Florence the people vanquishing, the nobles were excluded from the Magistracies, and if they wished to obtain them, they were under the necessity, not only of making themselves alike the common people, but of appearing such in their behaviour, in their minds, and in their mode of living; * * * * * * * * * * * insomuch, that the valour in arms, and the generosity of mind, which was in the nobility, was extinguished, and in the people, where it was not, it could not be kindled."

From the Secretary's discourse, we can argue how much the virtue of the *preceptor* must influence the mind and manners of the *alumni;* and we shall perceive too, that it will be but in vain to expect, that young people, because they go to school, should learn from the master *that*, of which he is ignorant; nay, we cannot even prevent pupils from learning from the instructer his manners. In a well constituted republic,

instructers of youth are *that nobility*, whose virtue should be imitated by the alumni: in a badly constituted one, instructers stand for the *common people of Florence*, whose vulgar manners are to be imitated by the nobles, or sons of distinguished families, to make themselves worthy of attention, and Magistracies.

The carelessness, or perhaps the indolence, of those, who constitute the best portion of any people, is one of the primary causes, by which the manners of the common people are acquired by gentlemen, instead of theirs being communicated to the mass of the people.

The illustrious Beccaria says, "Men most generally abandon the most important regulations to daily prudence, or to the discretion of those, whose interest is to oppose themselves to the most provident laws, etc. etc.

Those, who by birth are distinguished from the common people, only endeavour to keep themselves from the sight of the people, and for this reason, the people and youth seeing only *rude manners*, make those manners *theirs*. For it instead of seeing nobles, or those, who in whatever manner are distinguished from the common people, introducing polish into all orders of society, we see the very sons of those distinguished families learning the manners of the common people: why is it so? Because they im-

itate what they see, and see only the manners of the common people! Hence we see, that the ferocity of mind, which was confined to mercenary men in the middle ages, has reached the best orders of society: hence we see schools opened, where the exercises of the low orders of society are learned by gentlemen.

The people of ancient Greece, with the flourishing of arts and sciences, polished their habits; among us, while *sciences and arts* have nearly reached perfection, we see still preserved the *manners* of the Seythians and Normans; and to what should this difference be attributed, but to the circumstance, that the patricians, and the great geniuses of Greece, by not avoiding the common people, polished the manners of the people by their speeches and by their example; and ours by flying from the eye of the people, while polishing themselves, abandon to themselves the people, who still have the manners, which characterized the middle ages.

Men of science, provided they may decompose a body, believed a simple element, discover a planet not yet observed, or at least find the square of a curve, feel but little concerned, if, out of their laboratories, their observatories and cabinets, blood is spilt, or *God's likeness beaten to disfiguration.*

The philosopher, constantly looking after hidden truths, occupies himself with men in the abstract, caring but little for those, who were; nothing for those, who are: and yet "that philosopher (these are words of Beccaria) will deserve the gratitude of men, who from his obscure and neglected cabinet dared the first to throw among the multitude the long before fruitless seeds of useful truths."—Useful truths are those, from which is derived the greatest happiness divided among the greatest number—.

The wise and those distinguished for the purity or their manners, by their indolence, cause crimes to be tolerated; because, by not showing themselves, they leave the people in lack of good examples; and because, if honest men will not guide the multitude, wicked ones will.

Nĕ disastri d'un regno
Ciascuno ha parte, e nel fedel vassallo
L'indifferenza è rea.*

Let us not refuse the lesson, because it is couched in soft verses by Metastasio.†

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* In the disasters of a kingdom every one is interested, and indifference is guilt in the faithful subject.

† A law of Solon declared those persons infamous, who espoused no side in an insurrection—he foresaw that in a republic torn by intestine divisions, there was reason to apprehend, the soberest part would keep retired.

There are two reasons why duelling has not been prevented till now; 1st, because men have never positively undertaken to prevent it; 2d, because they have only aimed at punishing the crime, without correcting those abuses of civilization, and the want of a positive moral, which alone are the causes of duelling as well as many other crimes.

The first cause originates from this, that there are but few men, who will act in order to banish evils, which neither do, nor ever will, afflict them.

The second springs from the unpardonable indolence of the legislators of a nation, and of those holding Magistracies, who, instead of making criminal certain actions, which are the material causes of duelling, and of correcting the moral ones, by the uninterrupted execution of the laws, and the maintenance of a good moral, turn their ill-grasped sword of justice against a few, rather madmen, than criminals, who expiate with their blood the guilty indifference of their fathers, and their magistrates.

There are two means, by which to suppress the practice of duelling; to establish national discipline, and to enact positive laws.

If discipline be established by the law, it will determine the mode of education, which all citizens are to receive; and if all those, who compose a nation, are edu-

cated to be citizens, they will but respect the laws, which have caused their being thus educated: citizens, who respect and obey their country's laws, will but conform themselves to the law; and they all, conforming themselves to the law, will but act with uniformity: all citizens, acting with uniformity, will but have uniform habits; and habits being uniform, the mode of acting, as a citizen ought to, shall be but one; and the mode of acting being one, the individual judgments, as expressed upon the actions of a citizen, will be but uniform; and the judgments expressed upon men's actions being uniform, public opinion will be but one.

If laws are positive, every citizen will have a positive guide to conform himself to the laws, which relate to his actions; and if the actions of every citizen are in conformity with the law, they will be moral: the uniformity of acting of all citizens engenders uniform habits; uniform habits produce national morals; and *national morals* constitute *the moral*, which is to guide all men, who compose a nation: *the moral* leads men *to virtue; virtue* causes them to prefer *the public to the private interest;* and this *preference* creates another source of social happiness, namely, the wish to deserve esteem; or in other words, *the love of fame!*

Duelling, considered in itself, cannot be prevented in our present mode of living; it is a necessary evil, or a necessary consequence of many other crimes, for which either laws have not pro-

vided, or magistrates are unwilling, or unable, to apply the law.

Duels offending but a few, and those few at different times, there will always be but small minorities, who set forth against such an abominable practice: therefore they will never be prevented unless they, who really love men, and do prize our civilization, are moved, and brought to make exertions in order to prevent them, and to purge civilized society from habits, which would have dishonoured the Goths, and the Lombards.

It was from these reasons that, in an essay already published on the practice of duelling, I have undertaken to do that, which no one had even attempted; to undeceive the multitude, who, on account of the fancied antiquity of that practice, almost venerate it; and then, ascending to the causes, analyze the matter, which keeps alive this flame, destructive of true civilization.

It remained afterwards to show, how by rectifying morals, and laws, public opinion, which sanctions duelling, should be corrected; then how, by punishing the causes of it, duelling would be prevented; and finally how, by enacting good laws, the guilty ones should be punished, if duelling should not be entirely prevented.

But the experience of human passions, which

my exile and my meditations taught me to improve, and the knowledge of human nature, which constant observations and unprejudiced comparisons led me to acquire, satisfy me, that, whenever we attempt to be useful to the human family at large, we should consider ourselves bound to deal with men as they are. That is, in my attempt to show how public opinion might be corrected, and duelling and other crimes prevented or punished, I ought to hold the guilty one a man, who, in a state of civil society, is placed in circumstances, sometimes *unavoidable*, sometimes *improvidently* thrusted into.

Wherefore punishments and the laws, which establish them, bearing an immediate relation to them, who perpetrate crimes, render it necessary to look into the criminal legislation at large in order to satisfy oneself, that our criminal laws are apt to prevent crimes, and the punishments, established by them, efficacious to indemnify society for the injury received: hence proceed to debate whether the punishment of death is an efficacious means to prevent crimes, or the fatal cause of many crimes, and the most atrocious ones. Thence come to the fatal conclusion, that the punishment of death is the shortest

way to get rid of criminals, though the surest means to perpetuate crimes.

This I have desired to do in the present work, which I will publish as soon as my hopes may prove founded that, if we have now neither Corvi nor Decii, who spontaneously devote themselves to death for the safety of others, we have at least men, who are willing to give themselves some trouble for the sake of God and their neighbours.

GOOD DISCIPLINE AND WISE LAWS ARE THE MEANS TO PREVENT CRIMES.

Some, in order to spare themselves the trouble, which labour always carries with it for them, who spend their life-time in domestic peacefulness, or are wont to sprinkle their daily cares with the enjoyment of family intercourses, pretend, that it is but in vain we hope to prevent duelling, unless public opinion is first corrected. Yet, how is this public opinion to be corrected?—The farmer, who were to say, that his meadows can never be expected to give hay, unless the waters of a rivulet descending from the neighbouring mountain are caused to pass through his greenfield, would but idly talk, if he should not exert himself to have canals constructed, and the waters carried where needed; providing besides, lest the waters should be carried there, where they would rather be prejudicial, than beneficial!

Others, who wish not to be thinkers, exclaim: religion and the fair can, and should, do both, cause that practice to be abolished, and correct public opinion. Then how shall we pretend to complain for the evils which afflict us, if, instead of taking provident measures, in order to free ourselves from them, we abandon the care of it to beings, who are neither affected by those evils, nor acquainted with their causes: and,

therefore, ignorant of the extent of the injury done by them, and unable to hinder the unknown causes of them.

Are they not all christians, who fight duels? And they, who compose that public opinion, which sanctions the practice of duelling?—There is no doubt, that in his heart are conquered the unhallowed passions, which impel to duelling, who is a sincere christian!—But are they all practically christians, who live under the regimen of the christian religion? Or is it that practical christians alone are permitted to unite in civil society?—By our Saviour, by our governments, and by the consent of all men, to be a sincere christian was left, and is, to one's own choice. But the choice cannot be left to all men, whether they have to live in a state of civil society, or not.—Men naturally tend to reproduce themselves; by reproducing themselves, they approach one another; by approaching one another, they form societies: by the increase of society, wants are multiplied, and the multiplping of wants calls for an increase of the means to supply them; the increasing of the means to support life, leads men to the invention of the arts, and to the cultivation of sciences; and arts and sciences produce civilization; and civilization divests men of those brutal passions, which cannot dwell within the heart of a civilized man, unless a fatal abuse of civilization recall them from the times of barbarity.

If those barbarians, who were deprived of the knowledge of our holy religion, knew not this execrable method of destroying one another's life, amidst the

leisures of domestic and civil peace, how should we expect, that the religion, notwithstanding which so much barbarity grew within christian hearts, may by itself, unaided by men's best efforts, suffice to unroot it! —No one is so far a miscreant not to admit, that the Almighty can, by a simple act of his will, cause so much to be done; yet nobody should be ignorant, that the eternal Maker of all things, furnishing man with the means, by which to procure himself happiness in this world, and to obtain everlasting glory in the world to come, has granted him a free choice to making use of them.

Besides that for an unaccountable fatality, they, who really are religious, and they who wish better to appear such, deem it necessary, in order to be held christians, to retire from the world, and to pray in solitary hermitage, or in the church: and there meditating upon a future state, they feel as if unconcerned with this world, entirely regardless of those amongst whom they live; wherefore, although their prayers and meditations will prove efficacious to procure happiness to themselves, and to their neighbors, in another world, yet are unavailing to hinder evils, which afflict men in this one.

On the other hand, why should men persist in their indiscretion, as to require, that the fair assume to themselves the care of preventing crimes unknown to the sex? The fair have only as much empire as men will allow them to hold.—Although we cannot, upon positive facts, draw comparisons between our women and those of ancient Greece and Egypt, yet we have

no reason to suspect our inferior to those either in beauty, or gentleness: we may however assert that the celebrated Roman matrons would bear no comparison with those, who charm our present age, for either beauty, or elegance and genteel manners. Yet duelling was unknown then, and it is highly in practice now! Is it perhaps, that the fair grow more charming in order to captivate, and men, more wicked, not to be captivated!

Thus it is for men to look for the means by which to free themselves from evils, which afflict them. It is for the wise to show themselves, and to address the people, and discourse with them of the means to correct public opinion; to prevent duelling, together with the crimes connected with it; and to punish the guilty ones. I, while wise men are persuaded and willing to do so, willingly undertake, in the best manner I know, and am able, to speak of these means, in three distinct chapters.

CHAPTER I.

MEANS TO CORRECT PUBLIC OPINION.

The celebrated Florentine Secretary says: "and because men act, either through necessity, or through choice; and because we see that there is more virtue,

where choice has less authority: * * * *
* * * * * * * * * *

It is necessary for him, who has to order a republic, and to make the laws, to suppose all men possibly wicked, and such, as will always show him their malignant tendence, at any time, when once they have the eligible opportunity of so doing." Then proceeding to show how it did so happen in the Roman republic, he adds: "....but as soon as the Tarquinii were dead, and the nobles were freed from the fear entertained of them, they began to spit against the multitude the poison, which they had concealed within their breasts, and offended the Roman people in all way they were able: which thing shows the veracity of what I have above stated, that men never do any thing good, but through necessity; and that whenever choice has great authority, and where licentiousness is tolerated, every thing is soon filled with disorder and confusion."

I am unwilling, just in this place, to argue, whether men are in fact wicked, or if it be advantageous to suppose them always liable to be made wicked by circumstances; it will now suffice to have it infered from the above said, that public opinion always declares itself whenever choice has authority; that is, public opinion pronounces itself upon those things for which the law provides not.

Public opinion always tends to take the place of laws, if weak, to supply them if wanting. "For this, says Beccaria, it is but after having gone through thousand and thousand of errors with regard to things

the most interesting to both life and liberty; and after having suffered evils to the last extremity, that men are induced to look for the effectual remedies to avert evils, which oppress them, and to acknowledge the most palpable truths."

The well known writer upon criminal matters, the philosopher of Louisiana, after having observed that for imputations of great crimes, or offences, which suppose a want of integrity, men appeal to the laws, and for reproaches, impeaching one's vevacity, and for a breach of social behaving, they have recourse to duels, exclaims: and how does this happen? It is because the laws give satisfaction in the first case, but not in the second!

Thus if all men distinguished both for wisdom and learning have concurred, and do concur in this, that public opinion is depending on the authority which choice have, and that it arises either from the imperfection, or want of positive laws, why should we pertinaciously insist upon having public opinion corrected by any other means than the law?

In my essay upon the practice of duelling, I have shown how a partial public opinion, which is but a least minority, if compared with the opinion of the whole community, might be listened to, respected and feared: now I wish to show, that there are different kinds of public opinion.

Public opinion regards either things, or men: of things, it is judged according to the different interests, hopes and fears of them, whom things regard: of men,

according to the relation, that the private actions of a citizen bear to the education, mode of thinking, and feelings of them, who express their opinion.

Nearly all men will pronounce upon things, because no one will neglect either to favor his own interests, or to prevent their being worsted: wherefore we most generally hear a judgment to be pronounced upon things: hence we are enabled easily to distinguish the true public opinion from the apparent, or partial ones; or in other words, we may easily obtain a majority of individual opinions in a town, city, or province. But this is not the case with the public opinion, which regards men; because the private actions of men generally, do not affect us, and seldom interest us; therefore, we judge of them without knowing whether they will be the cause of good, or ill: hence, we judge of them without both, circumspection and common measure. The private actions of men being most generally indifferent to the immediate welfare of a community, we merely receive of them a personal pleasure, or annoy, as far as they bear relation to our habits, and to the state of our feelings.

The better to perceive the practical truth of my assertions, let us distinguish citizens into public and private men, and the latter into native, and strangers. We may easily obtain a uniform and public opinion for a public man, because with him, deeds, or those actions of his which bear relation to things, are judged. A public man might have the public opinion, which regards him as a private man, unfavorable, and yet have in his favor the majority of the individual opinions of

the whole nation: because few are they, who know his private actions, and of these few, very few are they, who expect not to receive benefit, or injury from his deeds; the reason for which they take notice of his deeds, and lose sight of his private actions! This is the reason for which, we are made acquainted with the vices, and virtues of public men only after their death; because as long as they live, men look upon their deeds for the sake of things, and care but little for their private actions, habits, etc., under the conviction, that the latter will prove neither beneficial, nor prejudicial to them, while the former will.

The private man, who is a native of the country where he lives, has come into the world with a public opinion that regards him; the opinion of his relations and connections, and that of the acquaintances of his family: he must respect, or fear it, and always listen to it; he can never free himself from that public opinion, except by changing sky, or clime.

A stranger, whether, through letters or friends, carries a public opinion with him, or not, will have no other public opinion, which regards him as a private man, but the sum of the individual opinions of his acquaintances: hence comes the proverbial axiom, "that in Rome you must be a Roman."

Thence we may easily perceive how, in those countries, where national discipline do not determine the public opinion, which considers the private actions of men, the stranger will be liable to contrive to obtain a public opinion, sometimes prejudicial *public opinion*, often *a* useless *one;* because of his little knowledge of

human nature, of the great variety of fictitious wants, and of the spurious discipline, which private men, or shameless demagogues, will always introduce, wheresoever the laws establish none.

The public opinion, which a stranger may have in his favor, will be prejudicial to him, when, either through fatality, or through want of a necessary prudence, he have made himself known amongst men, who are not, or are not deemed to be, honest, industrious, genteel, etc., by them in whose circle he is to move. A public opinion will be useless to a stranger, when he have obtained the favorable opinion of persons, who are not surrounded by the public opinion of which a native *should* enjoy; that is, when he have contrived to obtain the opinion of them, who neither by family, nor by connections and relationship are able to give a character to their judgment. Because they, who need public opinion, either to obtain offices, to earn their living, or to get admission into the higher orders of society, aim more at obtaining, for their own advantage, the favorable judgment of the stranger, than at availing him of their own. They will never be brought to express their opinion upon the stranger, if they have to apprehend, that they, whose opinion they need, might, on account of their expressed judgment, become useful and partial friends of the stranger; nor will they express their opinion, if they believe it to be the sole means to make the stranger known.

Hence the stranger is mistaken, who aims at the favorable opinion of those, who tickle his ears by compliments, and show him where to go to; instead of

making himself acquainted with persons, who can show him their home, and enable him to obtain the favorable opinion of their families. The stranger is likewise mistaken, who thinks that he may, at the same time, obtain the favorable opinion of a great number of families, before he has made himself strong with the opinion of a few honest families, and of good standing; availing himself more of the good will of the individuals composing those families, than of their riches, or rank.

I have spoken, more at length than I expected of public opinion, and perhaps not uselessly, if it should lead legislators to infer from it how much the public opinion, which proceeds from discipline established by the laws, will be conductitious to the welfare of a community. Besides I intended to show how vainly we accuse of folly, or indiscretion, him, who fights a duel, on the score that the majority of the community, he belongs to, does not sanction the practice: because, though we may, even without the aid of laws, obtain the opinion of a community upon things, we will never, upon the private actions of men, unless the habits of every man derive from national discipline.

Again, the public opinion, which regards the actions of a private man, is but the sum of the judgments expressed by the related of his family, and by his friends and acquaintances. The stranger is the more a slave of this public opinion (which is the sum of the opinions of his acquaintances,) inasmuch that the actions of his youthful age being unknown, his past conduct will do him no favor, and the future one cannnot avail

him, since they judge him upon the present one, and without the charity of neighbors, or the regard of family intercourses.

Hence we have, that honest men, sometimes are the victims of laws, which both, deceive, and punish them, sometimes owe their crimes to the imperfection of society itself. Hence it should be derived how wise and humane ought to be the legislator, and how cautious he ought to proceed in determining the crime, not in the abstract, but such as it is met with, and together with the concomitant circumstances of the occasions to crime. Let the legislator subscribe with a trembling hand to a penal law, if he have neglected taking from before the unaware, the uncautious, and the weak, the occasions to make themselves guilty. Let the legislators of a nation, when they aim at preventing, or punishing crimes, usefully distinguish, whether those crimes are depending on an absolute public opinion, or on a partial one, and apply ordinary remedies to the former, extraordinary ones to the latter.

Public opinion is never spontaneously expressed, except upon those benefits, or ills, which the majority of a community wishes to obtain, or to fly from.—Therefore, it will be but in vain that we expect to have the majority of a community pronouncing themselves against evils, which do not affect them. Macchiavelli says, that men, after having suffered innumerable evils, contrive to protect themselves against them by the means of laws. Beccaria concurs in the same

opinion with Macchiavelli; daily experience confirms it to the observer.

To conclude this chapter, I say, that two are the means by which public opinion should be corrected: the one to have provided for by the law, the wants of the people; the other to have determined by the law, the mode of acting for all men belonging to the community; this latter means is obtained by establishing national discipline, and by enacting wise and positive laws.

Public opinion is not self-created: the various and opposite interests of those, who united themselves in civil society gave it birth. The public opinion, which requires, or sanctions duelling, in no country, is the majority of the individual opinions of a whole community; yet it will always be the reigning one, unless means are resorted to, for to have the whole nation expressing their opinion against that practice.

Wise men unavailingly disapprove of it, if they let not the people know, that they do disapprove it, and do not lead the people to follow their example in expressing their disapprobation. It will be still more unavailingly, that they require men not to revenge themselves for the offences done to them, unless the law assumes to itself the avenging such offences.(1)

(1) See of the moral causes of duelling—Chap. II.

CHAPTER II.

HOW TO PREVENT DUELLING, TOGETHER WITH THE CRIMES OCCASIONED BY COMMON CAUSES, BY PUNISHING THE MATERIAL CAUSES OF DUELLING, AS CRIMES.

Those causes by which the practice of modern duelling was introduced, and is still maintained among us, in contempt of civilization and polish, originate, some from the corruption of manners and the abuse of civilization; others, from the indolence of the law: I wish to call moral, the first; physical, the latter causes of duelling.

MORAL CAUSES.

The following are moral causes of duelling: the attributing too much valor to riches; the little consideration, in which parents hold them, who are entrusted with the education of their children; the unwarily preaching and worse explaining the equality of all men; to have children familiarizing themselves with their instructers, instead of admonishing them to respect the instructer, wisely chosen by their parents; to have boys learning arts and sciences from people wanting in both, morals and manners; to have parents eager in having their children taught the *useful* arts and sciences, while unmindful of forming their moral

habits; finally, the bestowing prodigally, the appellation of gentleman upon the unknown.

I merely wished to point at the moral causes of duelling, and other crimes, (I beg leave to refer the reader to the third chapter of this work,) because I indulge the hope, that one, who is more learned than I am, and more acquainted with human nature, will show, that the greatest portion of the evils, which man has to endure in a state of civil society, proceed from the above enumerated causes. Though I wish to add, that those causes all together, and each one by itself, have a tendence to prevent free intercourses between all orders of society, while accommunating gentlemen with people, who supply their want of merit by their skill in arms, their rashness and conceitedness, ever ready to shoot him dead, who should decline to recognize their claims to be held gentlemen. (1) It is not wise always to repeat with Alfieri: " *Che a rei Patrizi ogni delitto, e fraude qui aspetta.*" (2)

But we had some times to exclaim with the Poet—

——————" E un Marcel diventa
Ogni villan, che parteggiando viene."(3)

Nobles, who are often addicted to luxury, lust, and

(1) Hence the absurd saying proceeds, " that every man is to be held a gentleman, until his actions show him not to be such " a saying, which is more absurdly pretended to derive from the acknowledged maxim, " that all citizens are to be respected as such, until found guilty by their country's laws."

(2) All crimes and frauds here belong to the Patricians.

(3) And every low man, who comes with a party is changed into a Marcellus.

every vice, when they cannot strive to deserve true praise in the service of their country, are the maintainers of one's country-discipline, of true virtue and generosity of mind, wherever wise laws constrain them to act. (1) Let him obtain true esteem, who deserves it:

(1) Whenever I have seriously reflected upon this subject, I have always found the difficulty to consist not in feeling what is the truth, but in manifesting that, which we feel to be the truth; therefore, I am not yet determined: and never shall perhaps, to manifest (as I feel) whether in a state of civil society, such as we enjoy, nobility is to be established, or entirely excluded by the law. Great majorities, but all *en masse* have pronounced themselves in favor, and against nobility; in either side reasons have not been aduced; nor would they be listened to, if given, as long as our choice proceeds from the personal interest of the few, and the foolish adhering of the many.

The first objection met with, in discussing this subject, is, that we hardly know what we mean for nobility. Some advocate, or condemn hereditary nobility, some the elective one; and all the rest of mankind seem to hate them both. Some believe that they mean aristocracy, when they merely speak of nobility; others believe, that they mean nobility, when they speak of the government of the few. Ambitious men, melting together aristocracy and nobility, make play-things of the multitude, which, under the conviction that they annul aristocracy by abolishing titles, divide themselves into small assemblages of men, at the head of which, always stands the ambitious, or the aristocratical man.

This difference is extant between nobility and the aristocracy of feeling, that nobility may be endowed with valor and generosity of mind; aristocracy of feeling is always devoid of both. Because noblemen, in consequence of the riches and splendor, which accompany their titles, appearing conspicuous to those, who are deprived of titles, need not to deceive, or to bewilder the multitude, in order to obtain their suffrages; yet courtesy, valor, and magnanimity are the

let virtue alone have the praise, and vice the blame; and we shall soon see the number of gentlemen to de-

only means, by which they are to be held in greater consideration, than others, who share with them but titles.

The very reverse happens with them, whose aristocracy is merely of feeling. In them, personal interest creates selfishness, ambition, the contempt of all men: they, having not been placed in a condition, whence their actions may appear conspicuous, are under the necessity of making their actions conspicuous by intrigue,—"A very droll spectacle it was," says Montesquieu, "in the last century, to behold the impotent efforts the English made for the establishment of democracy. As those who had a share in the direction of public affairs were void of all virtue, as their ambition was inflamed by the success of the most daring of their members, * * * * * * * * * * * * * the people amazed at so many revolutions, sought every where for a democracy without being able to find it."

Noblemen entertaining but little fear to lose, and no wish to acquire, apply themselves to deserve esteem by their manners; admiration, by their actions; ambitious, or aristocratical men, entertaining but little hope, that their manners will be known, and such as to procure them esteem, while they perform actions worthy of admiration, resort to make parties, and to seduce followers. In a manner that aristocracy-feeling always banishes courtesy, and often extinguishes virtue; nobility most commonly preserves courtesy, and sometimes maintains virtue in a republic.

I do not mean to say, that we should have a nobility, because I am not satisfied, that it is better for society to have it: yet I am unable to say, that it is absolutely wise to abolish, and to abhor all distinctions, which the fondamental laws of a nation may, or are wont to grant; because I am not satisfied that this abhorence has yet hindered evils, which are deemed to be the necessary consequences of the existence of nobility. I, perhaps, would wish to see something between abolishing and preserving nobility; yet my ta-

crease; and the few, that will continue to bear a name deserved, will never do one another of those offences,

lents and my experience, fall too short when I attempt to satisfy myself what this something should be: I am not ignorant of the ill consequences of both, yet I know not how they should be hindered.

Proceeding, I say: 1st. that when I speak of nobility, and aristocracy-feeling, I do not intend to speak of the government of the few: Sparta had Kings, Rome had Patricians; yet the liberty of the people was inviolable in the first, it became so in the second: Athens had but people, and their liberty was continually menaced; "the political government of the Athenians, observes Montesquieu, was such that the common people distributed the public revenues amongst themselves, while the rich were in a state of oppression:" 2d. that the nobility, which should have *ipso jure*, a title to offices and dignities, must be hated as the greatest flaw of a civil government: 3d. that the nobility, whose actions are not to be held virtuous, or criminal, before a common tribunal with the people, is to be abhorred: 4th. that the aristocracy-feeling by which men rise themselves above the others through intrigue, then to make themselves superior by an influence, which is more powerful, where men holding offices are less independent, must be held as the greatest evil, that may befall to a civil government.

The illustrious statesman of Monticello, speaking of aristocracy-feeling, (I believe) said: that there are two kinds of aristocracy; the one, a real one, that of talents; the other, a spurious one, that of riches. If we mean by aristocracy, the means, by which men are distinguished from others in a state of civil society, there is no doubt that talents and riches constitute the two aristocracies of civil society; but if we mean by aristocracy-feeling the wish one entertains to make himself superior to all men, and to influence their actions, riches alone can enable him so to do in a civil society, whither offices, honors and titles do not make them illustrious, respected, and distinguished, who obtain them.—Those people, who live under a popular government must, *after the example of the Greeks*, grant

for which duels alone are wont to atone. And then we will perceive that few are the gentlemen, who know not how to give, or to require, for the offences done to them, or by them done, a better satisfaction than blood.

distinctions to virtue; because, these are words of Montesquieu, "when virtue is banished, ambition invades the hearts of those, who are disposed to receive it; and avarice possesses the whole community.

No doubt, the aristocracy of riches must be the worst; because but little virtue is necessary to acquire riches: and worthiness, and the generosity of mind, rather than clear, seem to obstruct, the way to riches. They, who from obscurity grow rich, and then become aristocrats, will not patronage virtue, and the generosity of mind, because they will never deem that estimable, which they possess not. Their better quality will be money; and money will be their criterion to distinguish the worthiness of men; they will abhor courtesy, as the bat abhors the light!

I am not inclined, however, to advocate the extreme, that all men should run together in a row. A democrat in the heart, I wish that all men should be considered and respected as such; yet, I am the last man, who would bear to have *any company indiscriminatedly* imposed upon him: always willing to approach the ill-bred, and the idiot, when their physical nature calls for sympathy, I decline to have the annoyance of their material wit, thrusting itself into my moral nature; and always fly from the low man, whether rich, or poor. I do believe, that even eventual circumstances entitle the man, whose feelings are refined, to be distinguished from him, whose habits mere depend upon the physical nature of man, than on the celestial one. The ill-bred child, can as well grow a gentleman by the thousand aud thousands of dollars, as a guilted ass can be caused to imitate the gait of a war-like steed, by the gold of which he goes loaded, yet not adorned.

It appears to me, that it may be a source of good to society at large, if I, instead of proceeding to speak of the physical causes of duelling, should now attempt to trace the remote cause, (which has escaped the mind of so many men,) of the moral causes of duelling, of its practice, and of the crimes and vices, which are tolerated by society as the appertenances of civilization: this remote cause, I believe it to be, the total want of national discipline.

All modern republics, and governments, when compared with those of ancient Greece, will but bear witness to the superiority of the latter. The wise discipline, in which the youth of Sparta grew educated, made certain and inviolable the sacred empire of laws: because national habits proceed from national discipline: national habits determine the value of virtue; and virtue causes power to increase in a republic, and defends it from enemies abroad and at home.

I do not perceive, that Macchiavelli reasoning upon the causes, by which the quarels between the nobles and the people, produced so different effects in Rome and in Florence, has even hinted at national discipline, which ought widely to differ in the two republics; if Florence (1) had any, while Rome was possessed with the most excellent.

(1) An address by many citizens, to the *signoria* of Florence, in the year 1371, will testify to the veracity of my assertion. * * * * * * "Young people are idle, old men, lusty; and both sexes, and all ages are stained with blemishes, for which the laws, corrupted by the bad habits and morals of the people, can afford no remedy. Hence the avarice originates, which is

The people of Rome fought against the nobles, not merely to share with them the government of the republic, but also to practice with them the discipline, in which nobles were wont to exercise themselves. The people of Florence neither fought by themselves at first, nor did they fight afterwards to share the magistracies with the nobles, yet ranging themselves into parties, following the hatreds of powerful families, one party aiming at the ruin of the other. It was after the nobles had completely loosened the morals of the people, in order to have them fighting their quarrels, that some of the people, who had gained both, riches and favor, in those contests, wishing to obtain the magistracies of the republic, aimed at expelling from the government, the nobles, whose virtue they were unwilling to imitate. Hence all men of the people, following the example of those few rich families, aimed at, and obtained the magistracies. Hence the nobles, wishing to deserve the favor of the multitude, made themselves alike the common people; and thus all virtue was extinguished! And virtue was extinguished, because there was not national discipline, whence national morals are derived; whence the certainty of the

seen in all classes of men, and that eagerness, not after glory, but after shameful honors, whence derive the hatreds, enmities, dissensions, and sects, which cause deaths, banishments, the persecution of good people, and the exaltation of the wicked ones. * * * * * * * * * * * * * * * * * * laws, statutes, and civil provisions are not enacted to protect the liberty of the people, but to favor the ambition of the conquering party. Macch. Ist. Fior. lib. 3.

laws proceeds. Therefore, the nobles, not by their being expelled from the city, but by their making themselves alike the common people, caused Florence to be replenished with common people. (1)

(1) "When Sylla wanted to restore Rome to her liberty, (these are words of Montesquieu) this unhappy city was incapable of receiving it. She had only some feeble remains of virtue." Cicero, with the sneer of a popular orator, on hearing of the death of Cæsar, exclaimed: that Brutus, Cassius, etc. had accomplished a childish exploit with the undauntedness of a lion! Yet the Roman Consul appeared but to have forgotten, that his vanity, cajoled by the name of Father bestowed by the Roman people upon him, prevented his exerting himself to have the people reaping the fruits, which the breach of the laws, by which he saved his country from the impending danger, ought to have produced. He shewed himself quite unaware, that his consulship, far from availing to avert it, hastened the fatal ruin, which awaited the Roman Republic. If he had caused the people to restore the city to her discipline, Cassius, Pompey and Cæsar had not bargained upon the ruin of their country. If he, by gratifying his feeling of vanity, had not led the people to look upon him as their necessary Saviour, Cæsar had not compelled that same people to hold him their sole liberator. Even Brutus had not unavailingly killed Cæsar, if the people already made familiar with the breaches of the laws, had not accustomed themselves to value men, and not to fear the laws. "What does it avail her, (adds Montesquieu, speaking of Athens,) that Philip sends her back her prisoners, if he does not return her men? It was ever after as easy to triumph over the Athenian forces, as it would have been difficult to triumph over her virtue." Attilius Regulus, a better Father of Rome than Cicero proved to be, well perceived that the glory of a nation should be made to consist in the observance of the laws, and maintenance of national discipline: hence he, a true and loving father, who looked for the real happiness of his fellow citizens, foresaw that to restore a few to their homes, would be like to deprive the whole

Who, without feeling his heart to palpitate at the sight of the magic power of national discipline, can behold the Roman *plebe* on the Aventine-hill?—The Roman people were always united, and always fought for the love of their country's discipline; and for it the city grew more virtuous: the people of Florence fought to indulge the hatreds of the few, or to favor the ambition of the many: and, because virtue is an an enemy of both, hatred and ambition, they extinguished it. (1)

Let us see Athens and Sparta: in the latter discipline together with the laws remained untouched, and for it the republic had more than 600 years of life, without any remarkable division; (2) in the former,

number of a home, since when once discipline is flinching, the laws will be corrupted: and the corruption of the laws will cause all liberty to disappear, and licentiousness to take its place. Then "the members of the commonwealth riot on the public spoils, and its strength is only the power of some citizens, and the licentiousness of the whole community." This was the condition of Rome, when Brutus shewed by his death, that Cæsar was to his infirm country, like the physician, who may prolong life to an invalid, yet never restore him to his former strength.

(1) Montesquieu says: "that virtue is the principle of republican governments."

(2) "Another advantage their education had over ours, (adds Montesquieu, speaking of the ancients,) it never was effaced by contrary impressions. Epaminondas, the last year of his life, said, heard, saw, and performed the very same things as at the age in which he received the first principles of his education. * * * * * * * * * * * * ; in our

laws, and consequently discipline also, were often to be changed by the people; and as they had appointed orators, whose duty was, some to defend the old laws, some to praise the new ones, by them proposed, it happened that the people differently viewed the same subject; and they being divided in the mode of thinking, tendered to the orators, who were held responsible for the laws proposed by them, the opportunity to ingratiate themselves with the people, whether it was by means of a specious eloquence, wickedness, or treachery, and thus give rise to the parties and divisions, which brought the republic to ruin in less than one hundred years. (1)

Let us turn our regard to the family of Este, and we shall perceive how much honor wise discipline does the

days, we receive three different, or contrary educations, namely, of our parents, of our masters, and of the world. The latter effaces all the ideas of the former."

(1) Filangieri speaking of the relative perfection of the laws, declares those of Sparta and Athens equally perfect, because if the first lasted a longer time, the second survived to the first by the works of arts, and the culture of sciences. But Filangieri appears to have overlooked, that by the side of splendid monuments, tears are shed, and blood spilt; and that the flourishing of arts and sciences, is seldom, or never, the measure of the happiness, which every man enjoys, who composes the nation, where arts and sciences flourish. The Romans lost their liberty long before arts and sciences flourished in Rome. The sacred piles of inquisition were set up while the wonder of modern architecture rose a splendid abode of Him, "who dwelleth not in houses....." And, in our times, should we judge of the happiness of the Italians from the marbles of Canova, or the music of Rossini?

Prince! All the power of the Popes fell short against Princes, who, by the means of discipline, had won the hearts, and directed the minds of their subjects.

What else, in nearer times, rendered illustrious the now obscure Parma, but the wise discipline, which the Farnesi introduced, and maintained in that city?

In our times, discipline is made to consist in education: education is mistaken for instruction: and instruction is often confounded with school apparatus. (1) They are teachers, who are charged with the education of citizens. J. J. Rousseau, said: that the profession of school-master, and that of soldier, are the two meanest professions, when exercised as a money-making business.

I indeed shudder, when I see, and too often too, youth entrusted to mercenary hands; and when I see our youth to grow ignorant of the useful discipline, which must always govern a civilized people. I pity our civilization, when I consider that Rome had never increased in virtue, but for the holy institution of the censorship.

In our times, useful discipline are entirely disre-

(1) "Finally," thus speaks Beccaria, "the surest means, though attained with the greatest difficulty, to prevent crimes, is education: which, however, should be caused to consist less in the sterile multitude of objects, than in the eligible precision of them; in substituting originals to copies; in leading men to virtue through the easy way of feeling and love of praise; in keeping them from evil by the always successful means of necessity and incommodity; instead of the precarious one of the command, which merely obtains a constrained and momentaneous obedience."

garded, and what is worse, instruction itself, seems to follow the licentiousness, that the Norman Barons had introduced into the civil government. The sectarianism of decayed Greece appears to have spread itself throughout France and England. A republic, instead of establishing the discipline, in which they are to be educated, whose services the country will need, abandons the choice of it to people, who are subject to no discipline, and who are compelled to make the instruction of youth their business.

There is no censorship now for teachers! No one knows, or ever wishes to know, their habits. The worth of the teacher is desumed from the number of pupils: and the judgment as pronounced by the pupils is his only praise! Then why should we wonder, that we feel not true love of country; that manners are not uniform in the same nation; that morals are fluctuating? Is it not from national discipline, that love of country, uniformity of manners, and fixed morals, are wont to proceed?

Even instruction has become a party business: praises, being the only means to make the undertaking profitable, are paid for! Merit, if poor, languishes; if above want, it despises intrigue! Hence, to instruct will soon become the endowment of mercenary people: hence, instead of a praise-worthy censure, we have eulogiums.

I speak neither for sake of theory, nor to indulge a feeling of criticism against our times; I make allusions to no man, to no branch of instruction. An instructor in modern languages, I should not feel intitled to

speak upon discipline; because foreigners, far from introducing new regulations, are compelled to submit themselves to those existing in the nation, where they are brought to live; wherefore, it is but as an observer that I speak; as a man, who really loves men, and desires, in the best way he knows, and is able, to look after useful truths, by which to obtain—the greatest happiness divided among the greatest number.

Certainly, this cannot be called a useful truth, merely to point out the errors, and vices of the times in which we live, if, by ascending to the causes of these errors and vices, we endeavor not to recognize the means to obviate the evils, which are deemed to be the consequences of those errors and vices.

Nor is it by showing the liableness of men to be misguided as well by false as by true doctrines that we benefit society!—What good have done, to the human family at large, the writings of Voltaire, Mirabeau, Volney, &c.? Shall ever the present, or the future generations be more happy, because of doubting, or denying the existence of God? Is it because of sneering at the ministers of the gospel, and of persuading themselves, that our religion is not divine, that men are the more happy?—They are true philosophers, and true lovers of their kind, who show the practical means, by which to hinder more evils, and enjoy more benefits. —Why should we, echoing to Owen, complain of men, because they fly from the equality of all men, which is as unwarily preached by demagogues as necessarily condemned by both nature and civilization?—Is it not in consequence of the want of national discipline, whence

positive morals are wont to proceed, that a woman, in this America, gives the anathema to all modern institutions?

The mode in which arbitrary regulations have affected me, from the beginning of my human career, has been the cause of drawing my attention to national discipline; the fate of a young paysant of ours, whose abhorrence to be enrolled as a soldier under the French government, changed, from a dutiful son, and a useful citizen, into a high-way robber, satisfied me, from that early period of my life, that society often leads men into the fatal circumstances of crime. An unconquerable character, strong feeling, and passions as premature as violent, led me to abhor all our institutions; love of men, a habitual melancholy, and fondness of reading history, while reconciling me with society, forcibly brought me to investigate, if there were means, within the reach of man, by which vices, evils and crimes could be hindered, without spilling human blood. At the age of nineteen years, being chosen *a regulator, by the students of the University of Padua*, I succeeded in having the profaneness, from immemorable times tolerated at the thresholds of that temple of Minerva, prevented. But from that time my die was thrown; and now a fugitive and an exile, I am expiating that love of man, which yet sustains life to me.

So much I have said of myself, not to indulge a feeling of vanity, but to show, that circumstances brought me to write upon these matters, and not misplaced confidence in my talents.

But little experience was necessary to satisfy me,

that by resorting to such discipline, as would ensure to youth a national education, the only source whence virtuous habits and uniform morals are to be derived, many a crime would be prevented, which now hang a horrible flow upon society, and change men into wild beasts, continually aiming at one another's life and property. I have ever since felt broken hearted, when a man was to end his mortal career upon a scaffold. I have never visited a prison, without saying to myself: if these wretched creatures had known how to fly from want, and to shrink from vices, they, no doubt, would have preferred to gain, by the most assiduous and hard labor, a livelihood for themselves and their helpless families, than to drag here a cursed life, useless to themselves, and to society! Hence I have come to this conclusion, that "they alone are to be called true philosophers, and loving fathers of the human family, who, by constant watchings and meditations, have contrived to discover the means by which to enact laws, and establish discipline, as will take from man the liableness to crimes.

I, in order to paliate the defects of our times, shall never concur in the opinion of those, who pretend, that the example of the Romans cannot avail us, because in that republic, sciences were not cultivated. Even supposing this to be the case, education does not consist in the study of sciences;(1) many a citizen has been useful

(1) The laws of education are the first impressions we receive, and as they prepare us for civil life, each particular family ought to be governed pursuant to the plan of the great family, which comprehend them all.—Montesquieu, Book 9, chap. 1st.

to his country, though ignorant that Venus courts the sun: "education is that series of impressions, or of voluntary exertions of the mind, by which the developement and cultivation of the various faculties and affections are affected," etc.—(Rees'.) Sciences by themselves do not affect the various faculties of man; nor is it instruction that does it! Filangieri says: "thus that part of our legislative system, which considers the habits of the people, would in a double manner, favor public instruction, by favoring its progress, and by directing it. So education must embrace both the public instruction, and the moral habits of a people." Montesquieu, after having established, that the principle of popular governments is virtue, says: "it is in a republican government, that the whole power of education is required. * Virtue is a self renunciation, which is always arduous and painful.—This virtue may be defined, the love of the laws and our country. As this love requires a constant preference of public to private interest, it is the source of all the particular virtues." Is it then by instruction, and by the acquisition of sciences, or by the constant practice of self denials, that this love of the laws and our country, is to be instilled in human breasts?

However, the Romans had schools, and after they had made but one people with the Sabins, they could not be wanting in culture. The wisdom of Numa Pompilius is unquestionable. The fact of Virginia, whom Apius caused to be carried off from a female school,

offers a sufficient evidence, that the Romans did not neglect instruction; and should they have neglected it, how would they have succeeded in giving to the world a rich and majestic language?

It is but ridiculous to say that they imposed it by arms upon the conquered nations; because, whether given, or imposed, the language ought to have existed before. Besides that it will always be questionable, whether a conquered people, who have a language, might be practically and successfully compelled to accept of another. The Lombards, the French, and the Austrians, who, in greater numbers, than the Romans were wont to, settled in the conquered provinces, have never been able to force the Italians to relinquish their language, in order to speak that of the conquerors.

Let us not ground our unwillingness to follow the bright examples of a people, who will live yet in history, when England, yielding to the sweeping of the ocean, will show but uncivilized shores no longer the desire of new rising generations of Normans, upon the senseless remarks of many modern philosophers, " that Roman polity, Roman wisdom, and Roman discipline, were the efficient causes to subjugate so far the people around them, as to impose upon them Roman manners, etc. * * * * " because, indeed, good polity, wisdom, and home discipline, can never be the offspring of ignorance. The Romans had a language, and the people, whom they conquered, had but dialects; hence proceeded, that the whole of Latium spoke the only language then existing; after the same manner, that throughout all Italy the Italian language is spoken,

though every province has a dialect of its own. Dante, by his genius, perfected, what the Romans had, by their wisdom, polity, and discipline.

The observer would, even in modern Italy, trace back to the Roman discipline, the latent causes of effects, now respected as uses. We cannot, perhaps, point to another nation, where youth, like the Italian, is, without any distinction of classes, or ranks, governed by positive regulations in following their studies: where the habits of the alumni are derived from discipline: where he, who sins against good breeding, covers himself with infamy: where good breeding, unexceptionable conduct, and study, are necessary to obtain the honors of a laureate: where a Diplome of Doctor does always honor: where in fine, young people sign to their future career in the lyceums and universities, opening, or shutting to themselves, the doors of the august temple of fame!

Moreover, to convince ourselves of the good effects of the positive discipline of the Romans, let us observe how much the discipline for the alumni is similar in the different States of Italy. It was, because of this similarity of discipline, that in 1821, the cry of liberty resounded from Alps to Alps, and from the Alps to the shores, though Italy was not united by a previous conspiracy.

In that part of Italy now known, under the denomination of Kingdom *Lombardo-Veneto*, young people, from their most tender years, are accustomed to receive deserved praise, and due blame. There is in the schools a black bench, called the bench of shame;

boys sometimes go home with a chill, only because they were sentenced to sit on that bench. No one sits on that bench more than three times; because he, who feels no shame, is expelled from the school. In our schools, we see yet at a war of honor, the Romans, and the Carthaginians; we see yet the ancient consuls venerated by our youth. No one could witness the contests of honor of our little consuls, without exclaiming: unhappy Italy, thou shalt be free again, since thy children remember and venerate thy former glory! There young people receive a reward for their good behaviour, a punishment for their bad; there the scholactic crowns are made to supply the civic ones. (1)

(1) The transactions of the Students at Yale College, would, perchance, offer an evidence, that the utmost efforts of their well-wishers, will often prove inefficacious to cause young people to love discipline for their own sake, if the nation shows itself unconcerned with the education of them, who are, soon, or late, whether deserving, or not, to be called to serve, or to ruin, their country. The late transaction of the students of Yale College, is, I believe, unexampled in the annals of instruction! They petitioned, "requesting permission to explain conic sections from the book, and not to demonstrate them from figures, as a few preceding classes had done." Though I wish not to take notice of the transactions, that followed such a petition; yet I say, that even supposing, that Yale College possessed not men, whose talents are appreciated both, in this country, and in Europe; and that they, who preside over that seminary of instruction, were not, as they are, highly esteemed throughout the country, such a petition is a breach of necessary discipline. Besides that it is for them to pronounce a judgment, who know, and not for them, who are to learn. Strange as it should appear to be, it is, that

Some, to deny that the present Italian uses proceed from the Roman discipline, which governed all the people of Italy, when all Italy became Roman, say that there are positive regulations, because the governments of Italy being despotic, the Princes have the power and the choice to establish any regulation; this would be like saying, that the rain causes the sun to shine, because it removes the clouds; and then come to the fair conclusion, that the sun is brighter, where it continually rains. It is just in despotic governments, where infamy has but little power, praise none. It is just for the nature of those governments, that the magic power of the ancient discipline, is the more to be admired; because such uses are not prevailing in Austria, and France; and because if they still prevail in Italy, it is because the invaders have always found the alumni and the teachers, and the most distinguished classes of citizens, ready to sacrifice every thing in their defence; ready even to lose that life, which they are unwilling to sacrifice in behalf of their country. (1)

they, who are still ignorant of the science, should determine what is to be the best means to attain it? Though in a periodical on education the system is highly praised, that the pupils, who have to attend a school, should discuss and agree upon the discipline, which is to govern them; yet that cannot be the means to establish useful, wise and just discipline. A judgment supposes capacity to judge, and the capacity is derived from knowledge. Is it not inconsistent that they, who are about to receive their education, should be deemed to possess, what they are about to acquire?

(1) To be satisfied of the untruth of that assertion, we have only to read what Montesquieu says. "If the people in general have a principle, their constituent parts, that is, the several families, will

Thus let us not listen to them, who, being partial to licentiousness, pretend that every thing should be, all ways, free; because when once men are united into a civil compact, the mode of choice must be determined by the law. There is licentiousness, and not freedom, where every man may do any thing without conforming himself to a mode of doing. (see chap. 3d.)

Nor should we concur in the opinion of those, who proclaim it to be arbitrary with a civil government to submit instruction to civil laws, and to institute a censorship whether for instructors, or authors. (1) Let us not listen to the outcries of those, who accuse such laws as tyranical; because laws may be tyranical only with men, never with things; and because we must have either Rectors, or Demagogues; and the peoble will always nurse the latter, whenever the law does not provide for the former.

Let us have useful discipline for the alumni, and the ever venerable censorship for the teachers and authors,

have one also. The law of education will be therefore different in each species of government." Then should the Austrian government preserve republican discipline, because it is despotical !

(1) Filangieri, although he acknowledged the necessity of holding authors responsible, yet invalidated his advice by saying: " if the ill, which one may cause through means of the press, can with difficulty be concealed, and with facility repaired; and that, which one does with the sword, with facility concealed, and with difficulty repaired, why should we fear the press more than the sword ?"—the reason for to fear the press more than the sword is obvious; the former may do injury to the minds, and of the many; the latter can do injury only to the body, and of the few!

and then we shall see the law to create a uniform public opinion, in that nation, where moral habits are derived from national discipline.

The necessary information, and time too, are wanting to me to point to all the advantages, which are to be derived from useful discipline. He, who remembers the Postpolyta of Poland, will easily conceive, why that nobility show, even in our days, their love of country. The Polytecnic school of Paris, shewed at the last siege of the French capital, that discipline has the power of changing boys into men. The last contest of France for liberty, shewed how discipline makes heroes of youth.

The Americans should only turn their regard to West-Point, in order to recognize the salutary effects of discipline established by the government. I have been told by persons entitled to all reliance, that they all, who suffered the last penalty inflicted by that discipline upon the alumni, reluctant to conform themselves to it, attempted, and succeeded in gaining by their subsequent conduct, the esteem, which they had been taught to value so much in that institution. This I can say, from my own experience, that, since I landed in these United States, in search of an asylum, twice I have been in the most feeling circumstances, and at each time, when I was deserted by all friends, the bountiful Heaven presented me with a friend, who had received his education at West-Point, where, I hope, the alumni are practically taught by discipline, that to abandon an unfortunate friend, is to sin against God, nature and men!

PHYSICAL CAUSES.

I have already spoken of the physical causes of Duelling, in my essay on the practice of Duelling; here I shall only speak of the mode of punishing them. From the beginning, I say, that legislators should never listen to the unconscious talking of those, who pretend that there are offences to punish which the law will always prove insufficient. Let the law revenge the person offended, by causing the penalty to be inflicted upon him, who did the injury, and then every one will be satisfied, that the law can punish the guilty one, and thus revenge the person offended. Certainly that, in order to atone for an injury, and to punish him, who did injury to another, it is not sufficient to have laws enacted, and penalties established; yet it is necessary to cause the severity of the law to be applied, and such penalties to be established, as will be in a just measure with the injury received, and adequate to the offence done. Besides the penalties established by the laws, must be such as will be equally felt by every body, without hope of escaping them, either in part, or in the whole.

The offences, done to our honor, in the persons allied to us, are deemed to be the most enormous, and such as men are inclined to revenge, rather by means of blood, than by the law. And why so? Because the penalty, established by the law for such of-

fences, never is in just proportion to the injury which men, in a state of civil society, deem to receive from them.

I do not, and shall never, concur in the opinion of those, who think, that for the offences done against the sacred ties of matrimony, wives alone ought to be punished. Because, they say, if wives consent not to be vanquished by a seducer, we shall not have any of those offences. That is true! But if thieves, placing themselves on the same ground with the seducer of an honest wife, were to say, that unless one had amassed money, or any other valuable thing, and then placed it, where they hoped to baffle his vigilance, and to relieve him from his watchings by their industry, they would never have thought of possessing themselves of his property; should the law find those evidences well grounded to prove their guiltless conduct, merely because they are adduced by the perpetrators of the crime?

I own it, nearly up to the present stage of my life, I have been of the same opinion. But after my destiny had impelled me to visit different countries; after I had every where seen different proportions of the same vices, and virtues; and every where found those, whom circumstances have placed above want, intent to have a world of their own: I contrived to ascend to the first causes of those most sad effects, which the generality of men are willing to consider as necessary evils of the state of civil society: and as in a work of mine, whose aim was the freedom and welfare of my beloved country, I have been under the necessity to

satisfy myself, by minute and constant investigations, and to show, that the fair sex may be the cause of much good in a republic, which to good morals unites a firm government, and wise laws; thus, speaking of women, it appeared to me, that men, with the increase of polish, have become rather the tyrants, than the protectors of the fair sex.

That women are the necessary companions of men, it appears to me, that the History of all times clearly proclaims it to all those, who philosopher-like, read of the actions of men, who are no more! That women love their husbands, and that they wish not, and were not able, to bear life separated from them, the practice, introduced by them, of putting an end to their existence, by throwing themselves into the pile, which reduced to ashes the earthly garments of the spirit, that first inspired them with love, seems, I believe, fully to confirm. Because, however barbarous the law may appear, which compels wives to renounce life to join their departed friend, it will always be admitted, that the practice must have proceeded from this; that the surviving partner hoped not to find attractions in a solitary life; while living amongst men of good habits, who all were married, and loved both, their wives, and the children born from their marriage; and who would never be inclined to love a woman, who had forgotten her husband, nor to give as a mother to their children, a stranger, who had forgotten her friend's love, and her own.

If my recollection of ancient history adhere to the truth, it appears to me, that the generality of people

did not inflict upon women any other penalty, but the infamy, which the good morals of the people, among whom they lived, attached to certain actions. The faithless and barbarous wife of the imperious Scipio found it a severe punishment to be under the necessity of flying from the sight of men, who viewed with horror, both the crime, and the perpetrator of it: besides, she saw through her, the cause of the surviving one of the Gracchi ruined: so much the Romans hated the crime, that they nearly punished it in the guiltless relative of the guilty one. (1)

The ancient barbarians of Scytia, and those, who at later times settled themselves in the west of Europe, had their women not less faithful, nor less loving wives, because of not having enacted laws, by which to have the fair taught the crimes, of which they can make themselves guilty.

All men, from the beginning of modern civilization, have considered it to be an abominable tyranny, that a few should make the laws, and the many obey them: and this principle has been agreed to; that, in order to have just laws, and all men free, they, who have to obey it, must have concurred to making the law.

Now what are the laws, which are enacted with the concurrence of women? None! And yet they must submit to all the laws made by men, and cheerfully so they do, because they know not how, and wish not, to

(1) This is a crime, which was, and is to be punished; but in what measure, and proportion, civilization has not yet ascertained: the punishment of death will always be unjust with women, even if it were to be considered just with men!—See punishment of death.

live otherwise, than in conformity with men's will and pleasure. Why should we divest ourselves of all sympathy for the fair assuagers of our pains, as to punish in them, and in them alone, crimes which they had never committed, except induced to them by the same beings, whom nature inclines them to love; by those beings, against the advice of whom both, for choice, and duty, they cannot, and wish not, to act!

For a long time before, and even in our days perhaps, we have not had crimes, which were both, thought of, and perpetrated, unless the advice and concurrence of men in their perpetration, led women both, to think of them, and to perpetrate them! Then, ought we not to be satisfied with punishing those alone, who having concurred to make the law, must always respect and obey it?—They are men, who by their bad behaving, and their worse habits, cause women to be less loving wives! They are, who, sometimes, cause the fair to incline to vice; and they are, who always, without exception perhaps, induce women to crime: and yet we all, after the example of the fierce Philip of Spain, wish to punish in the weaker sex the crimes, which the most offend our pride; yet attributing to ourselves the right to induce them to crime. Why should men be exempted from the penalties corresponding to those crimes? Should not justice with a heavier hand strike those, who are more liable to accountableness, because stronger both, in advice, and physical strength?

Every one would hold him to be a barbarian, who should lash his slaves, because a costly piece of furniture, not well secured by the master, happened to fall,

and to be dashed to pieces; yet no one will have mercy upon them, who sharing, in no way, with us the civil life, solely occupy themselves to bless our domestic peace.

Further more I say, (and this I wish to say, notwithstanding the clamors of those, who hold him a weak man, and almost an effeminate, who undertakes to write in behalf of the fair sex) that women, neither for our own interest, nor for our love of justice, ought to be punished; because if men take the care of making the laws, they should also submit to the trouble of obeying them: nay, they who make the laws, are bound to preserve good morals; and if men set forth the example of good habits, their wives, and their daughters will not know otherwise, than to imitate them.

But even supposing, that notwithstanding what has just been observed, men should consider it of their interest, and persist in this, that women alone are to be punished for the crime of infidelity; I ask it in the name of Heaven, what revenge or what atonement for the injury done to him, is the wretched husband to receive, who sees, for ever, taken from him the person, with whom he expected to divide his joys, and his sorrows; who sees covered with infamy the weak woman, yet the mother of their common children?—Can ever the injury be atoned for by such a law? (1) Why then should we so severely reprove the unhappy husband,

(1) Bound to tell the truth, as I believe it to be, I say that this law must have proceeded from the total want of morals, because it betrays the wish of such legislators to indulge their inclination to libertinage.

who yielding to despair, goes to seek death in the chance of a duel, not to dishonor his kinsmen by suffering the last punishment of the law, which inevitably hangs upon him, if he desires to inflict upon the villain, who deprived him of all social happiness, the chastisement, which the law, neither cares, nor knows how, to inflict?

Where I speak of laws and legislators, I hope to be able to show, that this neglect of the law proceeds from choosing as legislators, men, who only would have to fear the justice of the law, without ever expecting to enjoy its protection. And although it may appear somewhat premature, yet I say, that the cause of the neglect of the law, is the choosing, *contrary to the wise practice of the Athenians*, our legislators from among that class of men, who having neither wives, nor children, need not the protection of the law: nor do they know how much sweet is necessary to make palatable the great bitterness, which often saddens the days of a wretched father, of a betrayed husband!

Some penalties appear to have been established among several nations for the crime of seduction, yet as the laws establishing those penalties originate from those northern people, who eagerly over-ran the world in search of gold, so they bear the stamp of the predominating passion of those barbarians. Besides that they appear more to consider the breach of promise, than the crime of seduction. Senator Livingston, to my satisfaction, has succeeded in classifying the offences done to our honor in the persons of those who are related, or allied to us; though preserving in a great

measure the transatlantic system of fines. The French legislators have divided the age of damsels into two parts: the law well protects them up to their fifteenth year, but it appears quite to desert them from that time. However, I believe, that the French have enacted the most judicious laws, both to punish, and to prevent seduction. Our modern legislators excuse themselves for their indolence, by exclaiming, that youth is so corrupted, and so loosened, as even the attempt to prevent such offences, would appear ridiculous! Such an exclamation, which wrongs our civilization, deserves an answer, that should rebuke their want of modesty. It is Montesquieu, who thus speaks: "It is not the young people that degenerate: they are not spoilt till those of maturer age are already sunk into corruption!"

Thus he, who does offence to one's honor, seducing his wife, or betraying his daughter, etc.—ought to be punished in such a measure, as the person, who received the injury should, neither wish for, nor be able to obtain, a greater revenge. How does this happen, that he, who deprives another of all his property by counterfeiting his signature is not challenged? It is because the laws which have provided, that he, who perpetrates such villanies, shall be imprisoned, take from him, who received the injury, the ability to obtain a greater revenge! Why do not the laws punish in the like manner him, who seduces another's wife, or betrays the daughter of a loving father? Is it that wives and daughters are not as valuable a possession as money, among civilized people?—No husband, no father,

will challenge him, who, being imprisoned, belongs no longer to society!

To abuse one in his person, is another physical cause of duelling; an offence for which the law should establish penalties, nearly as severe as those to be applied to the before going offences. This offence amongst those people, who are held to be gentlemen, will always be atoned for by means of a duel, unless the law causes such a penalty to be inflicted on the perpetrators of such an offence, as will be in just proportion to the injury, which, in a state of civil society, men deem to receive by it.

To beat one in cold blood, or, in other words, with a previous deliberation to beat him, is a proditory action: 1st. because he, who has thus determined to do another offence, must either wait for him whither he is in the habit of going, or go to find him thither, where he is reckoned to be: 2d. because he, who beats another, knows the person, he intends to beat, to be less powerful than he is, or so he believes. I can perceive no other difference between the proditory homicide, and the proditorious assault made upon the unaware, but the extent of the material injury; because in both cases, one is of a sudden assaulted by another, who by the means of offence he has at hand, whether natural, or provided renders every defence of the person assaulted unavailing. Besides that, as I believe to have shown in the 20th note of my essay on duelling, the assault thus made upon a well-bred man, either in a place of concourse, or in

any other place, where it shall be made known, is fellony; because it does injury to the standing of him, who is so villainously assaulted. Therefore, this offence should be punished as a violation of the supreme law of civilization; but determining the crime by a positive law, which should establish an absolute penalty to be applied for such an offence. Whatever is the punishment established by the law for proditorious assaults, it should be the same for all men, and in all circumstances, and such as should be equally felt by all the violators of that law; since in a well established government, this can never be tolerated, that citizens, by themselves, and on their own account, should decide of the enormousness of the offences done to them, and revenge them: because this would cause the contempt and the uselessness of the law, which must always govern men, when once they live in a state of civil society.

Facts will better satisfy every one of the necessity of having laws enacted, if not efficacious to prevent crimes, at least able to punish them. Let us then turn our observing eye upon all the civilized world, and we shall find, that at least the half number of duels fought were occasioned by the doing offence, or scorn in their person, to men, who belonged to the higher orders of society. If not, (now that all the circumstances, which accompanied the transaction, have been laid before the whole world) let us turn our regards to Philadelphia, the ancient capital of Pennsylvania, whose genteel inhabitants still sigh, because history shall record the most horrible catastrophe, that ever

took place amidst civilization. There the unhallowed passions raged, though surrounded by the amiable and the captivating, there the most savage transaction was prepared, in which innocents fought, and the one without blemish lost his life.—Would ever such a transaction have taken place to cast a lasting stain upon the proud capital, where the Americans first knew that they were an independent nation, if he, who did another offence in his person, had been punished by the law? Nay, would he have desired thus to revenge an offence, true, or supposed to be true, if the law had given signs of life, by causing him to meet its severity, who first set forth the example thus to revenge the offences done by writing? But for the dormancy of the law another gentleman would have had a warning, not to do an offence, which was to be atoned for by a fine of $500, and 30 days imprisonment! The law itself had not been ill-spoken of, if it had met all its violaters with the same severity. This I have said with no other purpose, than to show, that it must be the supreme law of civilization to obviate the beginnings, if society really aims at preventing crimes. Although we may not be flattered by the avowal, yet he, who is a true philosopher and a lover of men, will confess, that the half of our crimes are owing to the negligence of the whole society, which (in contempt of nature, and trampling over the most sacred rights of the individual man) stands idly, and then grasps the impassive sword of justice coldly to assassinate them, who were by half forced, or permitted, to spill human blood.

I am not a declaimer, who aims at applauses through

his daringness; nor am I compelled to give vent to spleen long compressed within my breast. I have but little hope to be read, while I may enjoy life through the means of esteem the sole aim of all my actions. I write telling the truth from my most int me heart; wherefore without the hope of pleasing the many. But I deem myself to be honored by the appellation of man, and am proud of having stamped in my face the likeness of our Creator; wherefore I love men, and do most willingly offer to the welfare of my fellow-creatures the little portion of my life time, which the supreme Ruler of men and things has reserved to me. "Every soul, that is not base, is permitted to be its own judge!" Hence, I feel confident, that a labor undertaken through good intention, may be the cause of some good to men; therefore, I already begin to experience the peace, which every man, who acts to good purpose, is wont to feel within himself.

I have shown, I think, in my essay upon the practice of duelling, where I speak of the public opinion upon the causes of duelling, that he, who should do another offence in his reputation, whether by words, or writings, would make himself guilty of a crime, which the law either punishes, or is deemed to punish, or is wont to punish; wherefore, whosoever, as a means of retributive justice, should with premeditation make an assault upon him, who thus offended him, will make himself guilty of the crime of proditorious assault, whatsoever be the extent of the injury he aims at revenging by means of an assault. As it is said for this offence, and for those before spoken of it is ne-

cessary to take the person doing the offence from the sight of him, to whom it was done: the law should for those offences, establish such penalties as will deprive the person doing the offence of the ability to repeat the same offence; or, at least, place him in such circumstances as he will not be able to do another offence except with great inconveniency of his. Hence the law should, for to punish and prevent such offences, aim at this; that the measure of the punishment bear a proportion to the real injury done, not merely to the physical human being, but to the polished man living in a state of civl society; and that the nature of the punishment were such as the person, who received the offence was not to wish for another kind of satisfaction.

The assuming of one to himself the right to pronounce upon the conduct of another, is the third, and last physical cause of duelling; when one, without having the positive evidences that a man has sinned against the laws of both, honor and society, yet casts a stain upon his good name. However, the law, which relates this offence, and punishes it, should not mind the private censures and the familiar discourses, which too often tend to discover the peevishness of one, who is not present.

If the law chooses to punish in a positive and absolute manner him, who, through a malignant intention, does offence to the good name of an honest citizen, whether by writing, or words, it will never be placed under the necessity of punishing him, who, in behalf of society, denounces the real wickedness of another. The reason, perhaps the only one, why the law has so

far been unsuccessful in protecting the reputation of him, who has it unstained, is this: that it considers a writing whatever to be a libel, which impeaches the conduct of one, who deems himself prejudiced by it in his interests, or business. In a manner that one might in fact be wicked, or dishonest, yet receive a reward for his wickedness, or dishonesty; because the law always requires him to suffer a penalty, who by writings, or public speeches, whether with just cause, or not, should cause the licit, or illicit traffic of another to be prejudiced. Let the law establish a necessary destinction between accusations and calumnies; let the law punish the calumniator, and protect the honest accuser; let the law cause him to be indemnified for the injury received, whose conduct has been unjustly impeached, and punish him, for his wicked actions, whose conduct was justly impeached; and then, instead of libellers and libelled, we shall have accusers and accused, calumniators, and calumniated persons. By thus providing, the law will cause men to act with more honesty through fear of accusations, and to judge of another's conduct with more circumspection, through fear of punishment; and, if the penalty established by the law be specified, and always inevitable, the calumniator will no longer hope to be confounded with the honest accuser.

Laws on libels, in the whole civilized world perhaps, might be assimilated to the pragmaticalness of a duellist: this always challenges him, who bestows upon him the deserved, or undeserved title of scoundrel; those always

punish him, who lays a true, or false accusation against another's conduct!

Yet nothing will ever so much contribute to the maintenance of good morals, as to have honest men frankly appealing to public opinion for to be protected against latent dishonesty; nay, if a nation really wishes to maintain, or to recall, good morals, it will always be under the necessity of protecting, by all means, impeachments laid before the tribunal of public opinion; (1) because by this means it obstructs the way to calumniators, who cannot hope to be confounded with the honest accuser, and banish, from among a moral people, the wicked who cannot hope to be melted into honest men.

It appears to me, that private satyres, and those chit chats, which, by times, tend sadly to compliment the absents, ought not to be considered by the law, for a good many reasons, of which the following ones are the most weighty: 1st. because the law would institute a kind of civil inquisition, if it pretended to intrude itself into private houses to know what men are talking about, when cheerfully sitting by their fire-side; 2d. because those gay stripping of one's garments, cannot do a great injury to him, whose actions proclaim him to be an honest man; 3d. because they, who thus pass their time, indulging the idle habit of tarnishing an-

(1) These accusations would in a certain measure supply to the censors of the Romans, and the Ephori of Sparta; or at least lead modern republics to establish a censorship, in order to preserve good morals.

other's reputation, while familiarly chattering, do so, either because they know no better, or because unwarily believe circumstances, or reports, to be true, or because their spitting always has a tincture of spleen; 4th. because those murky slanders might be the source of true praise for him, whom tongues thus ill use in his absence; since there might be among those idle sitters by, and talkers, one, who, knowing the real merit of the person thus spoken of, will make it known.

From what has been said above, it appears to me, that legislators should infer, how unwise it is, and how derogatory to our polish, to consider it to be a provoked offence, to make a premeditated assault upon another, who by words, or writings, has done, or is deemed to have done, injury to him, who undertakes, on his own account, and in contempt of the law, to revenge a real, or supposed injury, by abusing in his person that one, who has, or is supposed to have, done him injury. All assassins, without exception perhaps, aim at revenging by their misdeed, greater offences than those, which the law consents to have revenged by proditorious assaults, upon the unaware, or the weak; yet the law has no mercy upon the assassin; because it will not consider it to be a voluntary man-slaughter to kill a man, with a deliberate intention of depriving him of life, when once one, before the opportunity to commit the crime, has possessed himself with the necessary means to execute his criminal intention. Then why should the law consider it to be a provoked offence to abuse one in his person, after the moment in which injury has been done to him, who assaults another?

When the assaulted by natural, or acquired means of offence, may deprive the assaulted one of the ability to protect himself against a personal injury?

It is the law, the law alone, which calls for such offences, and protects them! Let us remember the fact of the proud senator, who walked in the Roman *Forum*, giving blows, and commanding the slave, who followed him with a bag full of crowns, to give away as many crowns.—Thus the penalty for that offence ought to be such, as no one could, without his great inconveniency suffer it; because the rich, and robust ones, will always make themselves guilty of such offences, whenever the penalty causes not inconveniency to the former, nor fear to the latter.(1) The practice of revenging offences, by the means of a proditorious assault and battery, is baser, and as pernicious, as the practice of duelling itself.

Truth among people of good morals, and virtuous habits, will never be a source of infamy to one, who is an honest citizen! Wherefore, this should never be tolerated, that the laws, or the by half permitted personal injuries, were to hinder, or deter honest citizens from making the wickedness of another known.

If we, who write in the present condition of society, were permitted to exemplify, I would wish to ask, to what respect is entitled the law, which punishes a proditorious assault and battery, with a fine of a few dollars; merely on the score, that the assaulted one has

(1) Hobbs says, that the wicked one "is a robust boy!" In a state of civil socieiy, riches are to be held a means of strength, as the physical constitution was, in that of barbarity.

prejudiced the assaulter's traffic? Should we not inquire into the nature of the offence, by which the assaulter had been prejudicial? No doubt: he has made known that the assaulter had defrauded him of a large amount of merchandize on trust! And was it true? It was: but no one should discredit another! Thus if the law considers assaults, committed for the purpose of revenging such injuries, as provoked offences, we had to come to this conclusion, that the law grants faculty to the dishonest man to benefit himself by the means of his dishonesty. He, who deals in an illicit, or dishonest way, cannot be considered as having been prejudiced, merely because his illicitous commerce, or dishonesty, have been discovered, and made known! They, who are accused of having done actions, of which they really are innocent, are entitled alone to receive an indemnity from the false accuser; but never they, who have cast by their actions a stain upon their good name!

Finally, in order to prevent both slanders, and personal abuses, it is necessary to have all the guilty severally punished, without taking any notice of those transactions, which may have taken place before they made themselves guilty of either of those offences. Beccaria considers it to be necessary; 1st. that penalties and crimes should never compense one another; 2d. that it should never be left to any one's choice, to save the violator of the law from the punishment, which corresponds to that violation of the law: and, although the learned Senator from Louisiana appears to differ from the 2d. principle of Beccaria, with regard to the of-

fences, which are reckoned to be the causes of challenges, and duels, yet I can but adhere to the opinion of Beccaria, and this, for the reasons I have already adduced in this same chapter, where I have shewn; that the law should leave nothing unprovided for, lest public opinion should take its place.

Wherefore he, who has cast a stain upon the good name of another, without a just cause, must suffer the penalty established by the law for slanders; and he, who has proditoriously assaulted and abused another in his person, must suffer the punishment established by the law for such offences, no consideration had for the transactions, which have preceded those violations of the law. It will be by proceeding thus, that the law will command, in any other manner, men will always render, by their choice, the authority of the law, null.

It appears to me, that there are no other offences, which should be considered as direct and physical causes of duelling. Thus proceeding, I should now discourse of the means, by which the violators of those laws should be caused to suffer the due punishment; and then of the nature of the penalties to be established for such offences: of the nature of these penalties I shall speak, where I speak of the nature of the penalties to be established by the law for the crime of duelling; of the mode, by which to cause them to suffer punishment, who have made themselves guilty of the offences considered in this chapter, I shall speak at some length, where I shall have to discourse of the means, by which to cause them, who were about to

fight, or had fought, a duel, to suffer the punishment established by the laws. Meanwhile I shall say, that there are two means, by which to bring the guilty ones before justice: 1st, to have them pursued by the officers, created by the law; 2nd, to have them accused by free citizens, banishing all hireling accusers. Both these means are necessary to bring the guilty before justice.

CHAPTER III.

HOW TO PUNISH THE GUILTY,

IF DUELLING IS NOT PREVENTED.

That action, which is forbidden by an express law, is criminal; he, who perpetrates it, is guilty; the perpetration of it is crime! The inconveniency to which he is subjected, who has committed a crime, is punishment; the means, by which he, who has perpetrated a crime, is caused to suffer punishment, render the law armed!—Therefore society to be entitled to punish the perpetrators of actions, which are deemed to do another injury, must enact laws, which both consider those actions and establish the penalty corresponding to the perpetration of them: to punish effectually the perpetrators of crimes, it must subject them to such inconveniences, as are in proportion to the injury, which society thinks to have received from those criminal actions: to cause the guilty to suffer the punishment established by the law, society must, by means of laws, create the means by which the culprit may be brought within reach of the law, which relates to the criminal action he has perpetrated.

Hence penal laws are the expression of the concurrence of the majority of the individual opinions of a nation in considering certain actions as prejudicial to that society, determining besides the indemnity, which society is to receive from the perpetrators of forbidden actions.

As in a state of civil society, those penal laws alone should be considered useful, which specify the crime, establish the means to cause the laws to be executed, and determine the nature, and extent of the penalty, which shall correspond to the violation of a law: I shall speak; 1st. of the laws: 2d. of the means, which arm the laws: 3d. of the nature of punishments.

LAWS.

Some believe, that the law would better obtain its aim, if it should consider only one of those, who fight, or are concerned in fighting, a duel, to be guilty; because if the law, by punishing the aggressor, should be so far successful as to prevent provocations to fight, duels also would be prevented: others think, that the law would most efficaciously attain the end, if it should punish all those who are concerned in the duel; because, if the law, by establishing punishments for those, who, in any way, assist in fighting a duel, could only deter men from assisting as witnesses in such combats, duels would not take place. The majority have been, and are of the first opinion, and with them, concurs Beccaria, who thus expresses himself:

"And it will not be amiss to repeat here what has been said and written by many others on this subject, that the best means to prevent this crime, will be, severely to punish the aggressór, or, in other words, him who gave the first occasion to fight a duel, declaring him innocent, who, without any fault of his own, was forced to defend, what our laws are unable to protect, his reputation."

The philosopher of Louisiana, though with some modifications, is of the second opinion; an opinion, in which appear to concur all modern governments, and in which the eximious jurists, Giuliani and Belardi, the Professors with whom I studied the criminal law at the Universities of Padua and Pavia, concurred.

All men, may, even acting with the utmost good faith, be guided either by circumstances, or feelings, in expressing under the shape of maxim, their opinion as a rule for others: thus it has almost invariably happened, that men, eminent for both, wisdom and honesty, when they undertook to look into the means by which to prevent crimes, have merely pointed to the laws, which would for ever maintain them both, wise and honest, instead of showing, by investigating the sources of human tendencies, the extent of human passions, and the combinations of the circumstances of civil society, which so much contribute to vary the commonly called natural tendence, what laws, or provisions, would place all men under the necessity of being good and honest!

Laws, if generally considered, would, perhaps, furnish an ostensible evidence, not that all men are by

nature wicked, as the followers of Hobbes pretend, but that we are all as well from organical constitution, as from moral tendencies, inclined always to do our own will!

The natural tendency, which urges men to perfectibility, or in other words, to their own welfare, causes the will. As the habits contracted from childhood, and the different circumstances, in which a particular state of civil society places him, cause each to yield differently to the same wants; so it happens that nearly every one aims, through a different way, at reaching the perfectibility, which we are wont to call human happiness. (1) The different means, by which we hope to attain human happiness, constitute the difference ex-

(1) Hence it might be inferred, why agricultural people are held to be more virtuous, and possessed with more good faith, than commercial ones. Because an agriculturist wishes for nothing but a copious harvest, and this he may obtain without prejudice to another; nay, perceiving that in almost all instances the wish of his neighbour is accomplished when his own is, he accustoms himself to enjoy a benefit in common with others, and even to wish for the good of others; since if his neighbours are blessed with plentifulness, he, in all probability, will also. A merchant on the contrary is liable either to find the market overstocked, or to be retarded by the winds, and damaged by the sea; wherefore he will feel a proneness to wish to others the same evils, which have disappointed his hopes. Besides, the principal, and perhaps the only thing aimed at by those, who follow commercial business, is money; and, as money cannot with bountiful hand be equally distributed by provident nature, those, who wish for it, have to contrive obtaining it before it goes within the reach of another: hence comes the wish of obstructing its passage to others; hence, the bad faith, deceit, and frauds, which often make of an honest merchant, an unpitied beggar.

isting between human wills; since the positive wish of a man to obtain that, which he considers to be the sole means conductitious to his welfare, ought to be called human will. (1) It is from this very difference of human wills, that laws have originated!—Why should we flatter ourselves with having received from nature a necessary tendency to justice, or even of having carried with us the innate idea of what is just? The opposite sentence will prove to be the true one, if we but consider, that it was for the pertinacy of human wills, that laws became necessary. (2)

(1) It will always prove unavailing, and often unwise, to insist upon the free will and choice of man; because, although we should distinguish in the individual man, his moral from the physical nature; yet, as man lives surrounded by physical beings, obtains sensations, through their means, and feels the fictitious wants of polish, by the mere act of joining a civil society: thus the first circumstances, in which he is placed, will ever have a great influence both, to circumscribe, and to determine, his free will and choice. Man's choice is said to be free, because it is not determined by any positive law, nor modified by the laws of nature, except so far as it should prove to be in opposition with the free choice, that belongs to all men.

(2) The received maxim, that men ought to be guided by principles, which though supposed to be universal, are not universally felt, when acknowledged, has proved to be the perpetual cause of real evils, of the greatest injustice of men, and of the most horrible perversion of whatever is good and holy! What avails it to the blind to be told, that the light shines for every man, and that man is enabled by it to admire in his works the provident hand of Him, who made the whole, if he sees nothing? Yet the sun brightens not the less because the blind is not guided by the light it spreads, nor because the wretch, who curses life in a dungeon, hopelessly wishes for a

Let us suppose that two men, from different distances, wish to attain two different points of one same

glimmering of its light!—Why shall we with Filangieri, unavailingly echo the sentiments of those philosophers who wish to consider every thing, and man too, in the abstract?—"I call, says Filangieri, absolute perfection of the laws, their harmonizing with the universal principles of the moral, common to all nations and governments, and suitable to all climes."—"The practice of performing actions in conformity with laws is, I believe, what we call morality; and as that practice results from habits, thus the universal principles of morality, designed by those philosophers, should be nothing else but the habits of acting in conformity with laws, common to most men and people! Therefore the several duties which correspond to every man's rights, as apparent from the individual human constitution, ought to be considered the necessary, and universal principles of morality." The Teatician, adds Filangieri, as well as Locke, feels, that a wild beast shotten by another, cannot belong to him, that he should not possess himself wih the produces of the soil tilled by another, and that a necessary defence alone may give one faculty to deprive another of life. * These (absolute laws) are the dictates of the principle of universal reason, of the moral sense of the heart, which the Author of nature has instilled into all the beings of our kind, as the living measure of what is just and honest; a sense that speaks the same language to all men, and prescribes the same laws at all times." Cicero had already emphatically described the principle alluded to by Filangieri. "A principle, which is more ancient than people, cities and senates; which speaks to men in a louder voice, than that of the Gods themselves; which is inseparable from the nature of thinking beings; which does, and shall subsist, notwithstanding the conflict of passions, notwithstanding tyrants, who wish to drown it in the blood they cause to flow, notwithstanding impostors, who had wished to annihilate it amidst the superstition,

straight line; if both of them, by obstructing one another's way, were prevented from satisfying their

which they caused to invade human hearts." Pray, to what do this superb sentence amount? Great as is the respect I entertain for the celebrated writer, it causes not the practical views of society, expressed by him, to appear either truer or wiser. Much as it contributes to the effect aimed at by the orator, to say that such principle existed before people were gathered together, and necessarily before people, gathered together, had built cities, and created senates, it adds not the least particle of evidence to satisfy the philosopher, that men, abandoned to that principle, act as they should, and are happy as they ought to be.—But little it avails to know, whether that principle exists in spite of tyrants, passions, and impostors, if impostors, passions, and tyrants, prevent us either from feeling its existence, or from gathering those fruits, which, notwithstanding its existence, passions, tyrants, and impostors have the power to destroy before they are ripe! Still less avails it to console men for their sufferings, to inspire them with the moral certainty that they are afflicted by numberless evils, notwithstanding that principle. It is, indeed, but too immaterial, to discuss, and to argue, whether that principle exist, or exist not, within us; what it is important to know, is, whether society have hindered, or may hinder crimes by it!—Tyrants, men governed by passions, and impostors, are yet men; and therefore possessed with the universal principle, which they are capable of resisting; against which they may, or do, act!—Society needs practical means, forcibly efficacious, to hinder the crimes, which afflict beings, now so different from the man, whom creation placed in the world; because he is no longer the child of nature, who knows that a brute shot dead by another cannot be his property; and since God made man such as he might make use of the products of nature, though without assigning him any private property upon any thing. I conclude this note by saying, that I am unwilling, for the sake of my fellow creatures, to admit, that such principle is to be derived from religion; because religion, the holier it is, the less

desire, they will easily be prevailed upon to withdraw so much from their way as to enable one another to reach the point, at which each of them aims; but if one of them should, by the very fact of having attained the point he aimed at, obstruct the way to the other, it would be with the greatest difficulty that he could be prevailed upon to abandon that point, merely for the convenience of another. This proceeds from the circumstance, that he considers the keeping himself in that point the necessary means to enjoy happiness.

However, as he, who has thus accomplished his wish, might there be so much annoyed as to be unable to enjoy it, or even violently driven from that point; so when he has once experienced, that he might be there annoyed, or unable to withstand violence, he agrees to keep himself as near the point aimed at, as it would possibly be, yet without obstructing the way, which the conveniency of others required to be free. These voluntary acts, with the increase of population, have become pacts; then laws, when they were to be agreed to by a multitude of men, who lived at different distances, who were, or might be placed, in different

it should interfere with civil governments; though it is to exercise all its empire upon human consciences. Religion contains the lessons of a merciful God; but society, in order to enable men to live in the enjoyment of what the Almighty has put within their reach to enjoy, needs laws, which, by the side of the command, show the great inconveniency to which he shall be put, who transgresses them; because men, amidst the conflict of passions and interests, will never be deterred from crimes by the thought of future punishments, which belief alone will cause to appear inevitable.

circumstances, and urged to make partial associations, and to agree to occasional pacts. Therefore a law is the resulting mean of all the opposing wills of those who concur in framing the law: they renounce so much of their will, as will enable them to accomplish that portion of their will, which they have not ceded.

The laws, which are agreed to by independent states or nations, aim at this, to obtain that portion of one same means of happiness, which each of them deems itself capable of attaining: wherefore every nation, or state, cedes that portion of its wish, which it cannot reasonably hope to accomplish, in order to have that portion accomplished, which it deems itself able to accomplish (1). Civil laws take into consideration the different points of a line, or the different means aimed at by every man, determining the way or mode, by which those points are to be reached, or the means to be obtained.

The penal laws might be considered the shield, which protects the civil one. Hence, in framing penal codes, a particular regard should be paid to the individual wills, or wishes for means, to accomplish which every man deems necessary to attain human happiness. Every action by which one prevents another,

(1) The basis, as agreed to by the thirteen states in organizing the Federal government of the United States of America, will most forcibly illustrate the principle. For this principle the English caused the world to resound with "mare clausum," when it was in their power to be the shop-keepers of all nations; and for this same principle they espouse the doctrine of "mare liberum" now, that all people decline buying at their shops."

either from attaining, or from enjoying, what he holds necessary to his welfare, and which he may attain, or may have lawfully attained, is criminal. Hence proceeds it, that the penal codes of the different nations differ so widely in themselves; because all people cannot wish for the same means, nor can they attain them with the same facility. Thence we shall come to this conclusion, that duelling also is a criminal action, by which one, through his wish to maintain, or to attain, a means of happiness, prevents another from enjoying the means, which he deems capable of procuring him happiness.

Because of our misguided public opinion, those who fight a duel wish to regain, or to maintain, public estimation, an estimation without which to live, as Beccaria observes, is held by some worse than death. "Because, by depriving him of the favorable opinion of others, one deems himself exposed, either to become a solitary being, an intolerable state to the man born for society, or to become the mark of insults and infamy, which, by their repeated action, make a more forcible impression on his mind than the imminent danger of the penalty."

Thence we perceive, that, although a few heedless persons should, through a fatal corruption of morals, hold duelling a means of obtaining esteem, the generality of that class of men, whom our present manners, in a measure subject to the practice, deem a duel to be the only means, by which to maintain their means of happiness, public estimation. And if so, what is it that the law should do in order to prevent

that crime? Two things; 1st. To guaranty to all men the respect due to the most valuable possession of a civilized man, honor; and this will easily be attained by the law, if it punish severely, and without exception, whomsoever does another offence in this most sacred property; 2d. To correct public opinion so far that the trifling breach of social demeanor should not be considered as offending one's honor; and this aim the law will attain by two means: 1st. By directing and forming national morals according to the second chapter of this work, that is to say, by establishing national discipline; 2d. By enacting positive, absolute, always armed, and always executed laws, which, while severely punishing him who does offence to another's honor, will prevent any one from aiming at taking revenge of whatever misdemeanor, which, though impeaching the conduct of him who thus acts, will never do a real injury to another in his honor.

It appears to me that legislators should not found their abhorrence of the crime upon the mere circumstance, that they, their friends, and the wise, believe him not to be prejudiced, either in public estimation or honor, who declines giving or accepting a challenge for an offence done to him, or by him done; and thus, confining themselves to making laws against them, who have given or accepted a challenge, fought, or assisted in fighting a duel, solemnly tell one, thou art not prejudiced in public estimation; and then show him the sword, which shall strike his head, if he decline so to believe.

It is precisely in this respect that the law will ever fail! It is but in vain that the law attempts declaring him honored, whom public opinion condemns, as it would but unavailingly declare him infamous, whom public opinion absolves. And still more in vain do the wise disapprove the practice, and hold it unnecessary to revenge offences which really or seemingly do injury to one's honor; nay, they were to be held, before the tribunal of the whole human family, the first accountable for the duels fought in our days, and for the evils which that practice does crowd amidst social intercourse; because they, living apart from the people, concur not in forming a public opinion, which will always arise from among men gathered together, and of which, whether it be wise or senseless, sociable beings will always feel the want. What does it avail me, that I have the suffrages of persons whom I shall never meet, and to whom I am as much unknown as their suffrages are unable to reach me, and incapable of securing me the enjoyment of the same intercourse, which was wont to lay a soothing balsam upon the chagrins of life? What we need, I wish to repeat it, is the favorable opinion, and the esteem of those, among whom, by choice or duty, we are to live. How are the votes, which are concealed within a closet, to console us for such a loss? I beg leave to repeat it again, what the law should secure to all men, is the public estimation which every one may enjoy, the favorable vote of his acquaintances. Let not the law, and the wise require, that any one should patiently bear insult and contempt, only because the law com-

mands them to believe that insults and contempt will make life dear to them; or because wise men, carelessly looking about, say to themselves: he suffers not infamy! Finally, it is totally unavailing to proclaim public opinion erroneous; because it is individual men who have to bear the fatal consequences of its liableness to error, as long as the law places those who are apt to resent an offence, between the derision of their acquaintances and the sword of the executioner.

Again; there is no partial public opinion where the law speaks positively, and always holds the same language. The public opinion, which sanctions the practice of duelling, requires that those offences be atoned for by the means of duels, which the law shows itself unable to punish. The law will never obtain the intent, unless it provides, that the penalty should be inevitably suffered by the violators of the law, and establishes such penalties as will be in just proportion to the injury, that a man living in a state of civil society is deemed to receive by the offences, which have been considered as physical causes of duels. In the twentieth note of my essay, I have attempted to show what a great means of social happiness is honor; here I say, that the opinion expressed by those with whom one has to live, will always be respected by him, or at least feared. In how many instances would a gentleman rather submit to receive a mortal wound by a treacherous dirk, than a blow by the hand of one who deems himself offended?

If the law will inevitably punish him, who has made himself guilty of any of the offences which I have

considered as being the physical causes of duelling, and, if punishing him, it places him in the circumstances in which every violator of the laws should be placed, that is to say, in such a condition as to be deprived of the ability to repeat the same offence; he, to whom offence was done, will never wish for any other indemnificatiou; and if he should, the very condition, in which the person doing the offence has been placed, would for ever render his wish unavailing. And if the offence is adequately avenged by the law, and the person doing the offence placed in such condition as will deprive him of the choice at least to repeat the same offence, there will no longer be a partial public opinion determining the means, by which offences are to be atoned for. Because that public opinion, as I have already said, either tends to supply the law, or wishes to attain the two ends which the law shows itself unable to attain; that is, to have the offence atoned for, and the person doing the offence deprived of the ability to repeat the same offence.

Now coming to the subject of these writings, I say: that the opinion of those who pretend, that, of those who fight, or are concerned in fighting a duel, the aggressor alone ought to be punished, has been the cause of inventing a fraud, by which to invalidate the law, causing it to fail of its aim; the opinion of those who think that the law ought to punish all who are concerned in a duel, has been the cause of the impunity of the whole number.

Among those people where the law punishes the aggressor alone, both the challenger and the chal-

lenged swear, and cause their assistants to swear, that he who falls dead shall be denounced as the aggressor. By the same oath they provide, that in the case of wounds without death, the quarrel shall be denounced as proceeding from sudden passion. Thus they make themselves guilty by that oath of another violation of the law, founded on the trite saying, "that any one may renounce his own title to be benefited;" wherefore the dead, and the wounded, by the means of a spontaneous oath, taken in a state of full health of both, mind and body, have renounced the indemnification offered to them by the law, and have, by the same oath, bound those, whom they consider as their executors, to cause their last will to be respected. By that oath, those who assist in fighting a duel, knowingly violate the truth in order not to perjure their own oath. So far is this from the fact, that the severity of the punishment, which the aggressor shall be caused to suffer, is in the least availing to prevent duels, that we see practised among those people where such laws are enacted, a virtue worthy of a better purpose, and a magnanimity that would honor ancient chivalry; one too often hears, that the rich duellist has placed, before the combat, at the disposal of the duellist, who is poor, means, by which he may both, escape punishment or trial, by a timely flight, and console himself for the bitterness of his exile.

They who are of the second opinion, deprive the law of the witnesses necessary for the conviction of the guilty; because of the legal axiom, "that no one is bound to accuse himself." I even doubt whether the

means resorted to by some framers of penal codes, that in order to afford the necessary witnesses to the law, he shall be exempted from punishment, who, having been present at the combat, should furnish the necessary evidence for the conviction of the combattants, will ever be the cause of any good to society. I believe that there are but few cases in which the law could grant impunity to him who discovers the crime, in the perpetration of which he assisted, and gives evidence against them, in whose previous deliberation to commit the crime he concurred? Better if there was none! It appears to me, that to reward treachery, in whomsoever it be, will never prove to be a source of real advantage to a well established society. However, as I believe, that in all probability I shall have to speak of the impunity in the course of this work, though much would not be wanting to the subject I treat, if I should not; I feel now satisfied with having expressed this doubt of mine.

It would, perhaps, be a source whereby some good may be derived to society, if I now, instead of proceeding to discourse of the laws, which might prove efficacious to prevent duels, should contrive to define, by showing what are the bad effects which the execrable practice of duelling causes to weigh upon the whole family of civilized men, if that practice is in fact to be abhorred and dreaded by all people and nations, whether duels are fought or not, within the boundaries of their own territories. All men of sense, who were seriously to reflect upon the subject, would, I believe, agree in this, that the practice of duelling is

inconsistent with our civilization; yet very few are they, especially among the wise and the learned, who care, or are willing, (although almost vain of their polish) to express their opinion upon a subject, which always will, whether they concur in this sentence or not, cast a stain upon modern societies; and those few, who appear to be willing to express their opinion, allow themselves invectives against persons, instead of showing the motives whereby that practice is to be held abominable, and duelling as a detestable crime to be abhorred by all men.

Most men are only moved to speak by the present tragical transactions, occasioned by that practice, and, speaking when anger predominates, or when their hearts are ulcerated, they attempt to draw society to punish, justly or unjustly, the living violator of the law, to lie afterwards, when their passion is calmed, or their grief soothed, speechless, and unable or unwilling to meditate upon the means, by which such transactions are to be prevented (1). They being but few who are materially injured by a duel, and they being still fewer who will accuse a magistrate for the crimes he has not prevented, or even attempted to prevent, it always happens that the few are unable to move the great mass of the people, who view with an indifferent, or philosophic eye, as some would wish to say, those

(1) It is indeed astonishing to see how some watch days and nights waiting for the opportunity to invoke the sword of justice, and then rejoice on hearing of the fatal blow, which parted vitality from a fellow creature; as if it were the effect of their might, because they were the first who challenged the law.

tragedies; that the magistrates are unshaken, the law unregarded, and the guilty unpunished! And why does it so happen? Because we also, when we aim at punishing crimes, permit ourselves to be guided by the same blind passion which urges others to duelling.

It is not by uselessly proclaiming, and less by unwarily urging, that the still living duellist must suffer punishment, because he has committed a homicide, that we may succeed in having duels prevented; yet it is by continually telling the people, and without cease repeating it, that it is necessary to have laws enacted, which will prove efficacious to prevent, or at least to punish, duelling, that we may reasonably hope to have that crime prevented.

It is necessary to lead the people to know, what are the evils imposed by the nefarious practice upon society. It should not be for the mere purpose of revenging spilt blood that we invoke the sacred sword of justice, but also to avert from society the abominable vices of which this method of revenging injuries is to be held the father. They are but few, who die in consequence of duels fought, and the injury duels fought cause, thanks to our dormant laws, our slumbering magistrates, and our unawakened society, is considered to be private; and so it must be: since they who are out of danger wish never to foresee the case, in which they, exposed to the same danger, will unavailingly invoke the sympathy, which they have denied to the distressed, yet a fellow being.

The following evils appear to be the moral effects of the practice of duelling: 1st.: many men attribute

to themselves an indistinct title to insult another, because they are ready to offer him the satisfaction, which duels are deemed to afford: 2d.: some, who would not wish to resent an offence, or even would make allowances for the particular circumstances, in which the offence is done, feel as if bound to resent it, lest they should be thought wanting in courage: 3d.: a bad, or a wicked man, may feel perfectly at liberty to intrude himself any where, provided he is able to force people to respect him as an honest man, or to accept a challenge (1) 4th.: the greatest evil imposed upon society by the practice of duelling is this, that honest and wise men, not so far philanthropic as to suffer themselves to be abused for the sake of others, are compelled to withdraw from the sight of the people, and abandon them to the addresses of daring demagogues, and to the intrigues of ambitious, speculating, or hireling politicians. This practice, as it proceeds from the inefficacy of the law to prevent it, will always introduce, either arbitrariness, or licentiousness, in any government; and licentiousness will ever prevent the people from being guided, or represented, by the honest and wise citizens, who are compelled to keep themselves retired, in order to avoid the contumelies of them, who, like the fisherman, wish for the

(1) I have been very often near losing my temper, when I heard people say, "every man is to be held a gentleman, until he has turned out to be the contrary." Is one to be held a gentleman, because he intrudes himself as such, and because he is able to challenge him, who refuses to acknowledge his claims to be held such? On the other hand, a man must be known as such, before he is held to be a gentleman.

storm, better to surprize their unaware prey. The press, more than any thing else, is governed by this practice. Philosophers, chaste and sober writers, in vain sigh for the abolition of holy censorship! Their works lie buried beneath entertaining knowledge, literary periodicals, scrap books, and memoirs and lives of all men, who have friends, acquaintances, or enemies, enough to make the book saleable; and, if they are digged up from among gilt encumbrances, their authors are called to account for all that, which does not meet the views of the Roman Catholic, the Protestant, the Dissenter, the Enquirer, and the Politician, Sailor and Soldier. Booksellers conspire with the fashionable authors, to annihilate the rude author, who prefers instructing men to deceiving them. Writers, free from the vexations of the law, do, but in vain, look at it for protection against the abuses, or the intrigues, of hungry herds of dealers in knowledge. Editors of newspapers are made accountable for every truth, which happens to fall from their pens, unless secured in the garments of flattery: on one side of the Atlantic, they are assaulted in their counting rooms, (1)

(1) The editorial excursion to the seat of government of the United States of America is too well known, to be here related. An evidence, that the challenging practice has communicated itself to all orders of society, and to all classes of men, was exhibited by an article which appeared a short time after the fatal transaction near Philadelphia; it threatened an editor of a newspaper as having made himself liable to be sued, for having, without just cause, impeached the conduct of the magistrates, who, he had intimated, might have averted the fatal catastrophe, if it were reasonable to suppose, that they were not ignorant of transactions, which, far from being so

on the other, mobbed by the populace. Historians, too, like the ancient priests, are compelled to inspire, through blood, the multitude with the respect due to the weakest of all goddesses, truth. (1) Even a private letter, under the sacred seal of friendship, calls him to descend into the aræna, who is unwilling to bear abuses. Justice lies without an altar: chance, lies, blood, and abuses, have become our supreme deities. 5th. And these wicked effects of a more wicked cause, each of them, and all together concur to banish the honest frankness, so becoming to all free and honest men, and to foment the wicked rashness of hireling demagogues. Men must both, speak, and write, to please one party: simulation takes the place of prudence: the wise are intimidated, the ignorant imboldened: the good depressed, the wicked triumphing:

cret, had been made known by means of the press. My essay, though unlooked for, showed, that the challenging practice, had but acquired a new vigor from the blood shed; since notwithstanding all laws protecting the liberty of the press, there were people, who felt as if entitled to attribute to themselves the right to exercise a temporary censorship. Finally, the gentleman who published an account of those transactions, whether entitled, or not, so to do, whether he stated, or not, that, which was the truth, was sued by the principal party, it is said, of those transactions. And now that the whole has been made known, every body peacefully sits at the shade of laurels won, not only in spite of the laws, but in contempt of civilization; and what is worse, our laws are hardly entitled to punish them, and society should absolve them!

(1) The evidence, which the historian of the late campaign of Russia, had to offer, in order to prove, that his statements adhered to the truth, confirms my assertion.

and when all these ills afflict any nation, or a people whatever, then duels are no longer fought, yet the practice of duelling is not abolished!

Either the love of my kind causes me to induce myself into error, or all those evils are the sad effects of that practice; and what I shudder to say, that practice has reduced society to such a condition, as the many believe, that, less want of frankness, less depression of the good, less flattery of the perverse, and less hireling of writers, are to be met there, where duels are fought. This belief itself, is a great evil; for ever, perhaps, unhappy society, if true! Ye, fellow-men, ye, who are wise and honest men, and ye true philanthropists, and this for our own sake, if the above enumerated evils, are in fact, the bad effects of that practice, let it be known to the whole community, and then every body shall wish for laws, by which this pernicious practice may be suppressed! Then, but then alone, the people at large will feel themselves prejudiced by this practice; and then, instead of looking at, indifferent spectators of an evil, which is deemed not to affect them, they will wish for laws, which may prove efficacious to avert from them so many an evil. The people of a whole community, when once are made aware of it, will undoubtedly wish for, and cause to be, enacted, laws, by which to punish not only the crime of blood-shedding, but the crime also of aiming at the total ruin of society, by violating all sacred laws of civil society, and introducing licentiousness in a commonwealth. We must first be convinced that those evils, which have been above considered as

the effects of that practice, do, in fact, proceed from the looseness of the law, which permits every one the assuming to himself to revenge real, or apparent offences, by the means of a challenge, whether it be to fight a duel, or to resist aggression and contumelies, and then we will be able effectually, to think of the remedy.

Some believe that cruel laws are better calculated to prevent duels; nearly all modern governments have given evidence of this belief; some are of the opinion, that mild laws would be found more conducive to the desired end; Beccaria was of this opinion, and the philosopher and jurist of Louisiana supports it now. It appears to me that cruel laws, as well as the mild ones, may prove equally efficacious, or inefficacious both, to prevent and to punish this crime. It is not by establishing penalties, that we have efficacious laws, yet by creating by the law the means, by which the violators of the law will be caused inevitably to suffer punishment.

I wish not to persuade myself with Beccaria, that men, abandoned to their most obvious feelings, love cruel laws; although, to the great shame of society, we see the most cruel and inhuman laws amassed in a heap, which we call a penal code, by nearly all modern nations. He accounts for it by this: that the fear of being offended, is greater wiih men, than the wish of offending!—But if we raise the magic veil, which hides all true light from the eyes of the legislator, we shall perceive, that our cruel laws do not proceed from human, and still less, natural wickedness,

yet, from the personal interest of those, who make, or are wont to make the laws

If we except some laws, which have reference to political crimes, nearly all criminal laws aim at punishing the crimes, which are committed by the most numerous portion of the human family, who drag out a wretched life to die poor, and often of want. Yet of this so numerous a portion of human beings, none personally concur in making the criminal laws, which are enacted in a Commonwealth; nay, no one of them is ever required to give his assent, though the whole of them must obey.

Let the government be monarchical, aristocratical, or popular, the, so called, minute people never concur, in any way, to enacting criminal laws; therefore, they, who do, or may, make the criminal laws, are the whole number of them, who, either have property, or derive from their emoluments the means of a comfortable living.

The crimes, which are most frequently perpetrated in a state of civil society, are caused by the wish of obtaining property.

Poisonings, the greatest number of them at least, are committed either to accelerate the moment of succession to an inheritance, or to secure to the poisoner those goods, which ought to be transferred into other hands, or to enable the perpetrators of the crime, secretly to possess themselves of a portion of the property belonging to him, who is to be poisoned. Thieves and high-way robbers are impelled to crimes by the desire of obtaining that, which, from a fatal corruption

of the minds, is considered to be the only means of civil happiness. Fraudulent men, and counterfeiters, aim at no other thing, than to possess themselves, in any way, with that, which they have not, and which they deem to be the sole means, that will prove conducive to social happiness.

As they are but few, who, being possessed with the necessary means of an easy and commodious living, will expose themselves to a manifest danger of wholly losing them, merely through a possible acquisition of a few means; and as the wish of obtaining either ceases within us, with the cessation of want, (1) or is counterbalanced by the apprehension of losing; it happens, that they who make the laws, or are charged to look into the means by which to prevent crimes, are wanting one of the necessary elements to a just, and useful legislator, that of fearing the law he makes! Wherefore, criminal laws have become the barrier,

(1) Though my assertion might appear contrary to the commonly received axiom, "that the more riches one possesses, the more he wishes for them;" yet I believe that my principle will cease to appear a paradox, if we but observe that in the axiom, for riches is not meant property, or necessary means of an easy living, but the superfluities of life. Besides that, the axiom is to be applied to them, who have been acquiring and accumulating what we consider the representative of all the commodities of life, and not to them, who are possessed with either property, or riches!.....Want, naturally impels men to wish for the means to supply it; acquired superfluities are apt to instil eagerness for the accumulation of them, yet they never produce the urging wish, which want is wont to ingenerate; and if they could, beside that wish, would grow the fear of being deprived of the superfluities, which one already possesses.

which protects property from the assaults of want; they constitute the line of circumvallation drawn by society in order to separate the poor from the rich.—Here the circumstance as designated by Beccaria is verified; that (with them, who make the laws) the fear of losing is greater than the wish of obtaining; or in the words of Beccaria· "the fear of being offended is greater than the wish of offending!" But even the fact, that such a fear exists in the mind of the legislators, would not offer an evidence, that the wish of offending another exists within us; and although the principle, established by Macchiavelli, that he, who has to make laws, ought to suppose all men wicked, is to be highly appreciated for the practical usefulness of any legislation at large; yet I most positively adhere to the opinion I have above expressed, that it is never the wish of offending another, which compels one criminally to act, though it is the wish of obtaining, by all means, what he holds necessary to his own happiness.

Although I am far from denying that men did not desist from their contrivances to have their wish accomplished, because they were apprized by many a fatal experience, that aiming but at obtaining, they wronged others; yet I shall never admit, either that we were born with a predisposition to offend others, (1) or that

(1) *Napoleon, though more like a man of genius, who feels the whole of human tendencies, than like a philosopher, who submits to calculation the causes, by means of their effects, has borne witness to the veracity of my assertion—"Poor Toby," said the Emperor, one day, "has been torn from his family, from his native land, and sold to slavery: could any thing be*

the case of him, who possesses much, is to be held absolutely equal to that of him, who possesses not wherewith to supply natural wants.

more miserable to himself, or more criminal in others? If this crime be the act of the English captain alone, he is doubtless one of the vilest men; but if it be that of the whole crew, it might have been committed by men perhaps not so base as might be imagined; for vice is always individual, *and* scarcely ever collective. *Joseph's brethren could not bring themselves to slay him; while Judas, a cool, hypocritical, calculating villain, betrayed his master.*"

The subduer of kings felt within himself the veracity of the maxim, that the desire to have his wish accomplished is the principal motive of the actions of man. *Joseph's brethren, being many, looked not upon Joseph as the sole and positive obstacle to have their wish accomplished, because the whole of them could not wish for one same means of happiness: while Judas, aiming only at money, and having but one wish to accomplish, that is, his own, readily sold his master; because, by so doing, his wish was to be accomplished.—It is in accordance with this same principle, that Napoleon declared* vice *to be* individual; *since vice, in nature, is nothing else, than obstructing the natural growth of a created thing; and with man, the accomplishing his wish, without taking notice, if, in order to have his wish accomplished, he prevent others from accomplishing their own. This same principle caused Napoleon to say* "and scarcely ever collective;" *because as soon as a number of men are gathered together, they are taught by the variety of the means, they aim at, to renounce a portion of their wish, in order to have the other portion accomplished. Wherefore men are taught, by the mere act of forming themselves into a collective body, to modify their individual wish, not to obstruct one another in the attempt to have it accomplished. Napoleon thus happily proceeds: "a philosopher has affirmed, that men are born wicked; it would be both difficult and idle, to attempt*

To offend another will ever cause great inconveni ency to him, who has property, even if we had not laws; because we, by contriving to offend another, waste that, which we employ to offend him, instead of enjoying it; and because but little experience suffices to satisfy ourselves, that we, while attempting to offend

discovering whether the assertion be true. This, at least, is certain, that the great mass of society is not wicked; *for if the majority were determined to be criminal, and violate the laws, who would have the power to restrain or prevent them?" These admirable words would by themselves do honor to the great man, and rebuke the shameless daringness of his detractors. Ought not the English Novelist to have known, that he, who submits every thing to his unruled ambition, cannot consider the majority of men good; and that the ambitious man esteems not, but despises, men, whom he employs as means to have his wish accomplished? Is it not to be apprehended, that he judged too favorably of men, to be their ruler, and to benefit them, perhaps? If Napoleon had suspected, that the variety of human wishes, and the corresponding apprehension of not having them accomplished, counterbalanced the tendency to have their wishes accomplished, he would, in all probability, have died upon the throne, he owed to his genius, and generosity of mind. The following passage will better illustrate, than I am able with words, the amiable disposition of a man, who could overcome all obstacles, except a cool, calculating and selfish polity. " This is the triumph of civilization; this happy result springs from its bosom, and arises out of its nature. Sentiments are, for the most part, traditionary:* we feel them, *because* they were felt *by others, who preceded us: thus we must look to the developement of human reason and faculties, for the* only key *to social order, the* only secret *of the legislator.* Only those, who wish to deceive the people, and rule them for their own personal advantage, would desire to keep them in ignorance."

another, for the mere purpose of adding something to the much we possess, make ourselves liable, (though we had not the protecting laws of property) to be deprived of the much we have, instead of acquiring that, at which we aim; and this for two reasons: 1st: because we are not certain that we shall succeed in offending another: 2d. because we fear that another may deprive us of our property, while we are intent on depriving others of theirs. In a state of civil society, every one might be satisfied, that, they at least, who were born in a state of affluence solely are intent to enjoy their means of a commodious life, wishing for any thing else but property. (1)

It might be observed that there are homicides and assassinations, which are perpetrated without any

(1) Mr. Skidmore, of the State of New-York, has most happily illustrated the principle, that we love riches for its uses; that is, as a means of happiness: and I must sincerely regret that the nature of this work would not admit my quoting some passages, which would bring to a moral certainty my conclusion. Though, it appears to me, the learned writer, when he attempts to demonstrate, that men love riches but for the use they make of them, has overlooked, that they alone love riches to enjoy them, who merely wish to obtain by them those commodities, of which money is held to be the representative; that they are many, who love money, though a mere burden to them, because they dare not to make use of it. Any thing we love appears to us, according to our mode of viewing things, the means eminently conductitious to happiness; and therefore, we might very well suppose, that a man loves riches, because he aims at leaving his heirs rich, though he be averse to give them, through fear, that his heirs, and himself should be poor, before he is dead.

view or hope of attaining any thing; and I feel as I would positively deny, that there is one single homicide, which has not been occasioned either by the price to be paid for, by the hope of acquiring something, by the fear of losing that, which one unlawfully possessed, or by the apprehension of not obtaining that, which the person to be assassinated might or would, in all probability, obtain. There is, perhaps, one single case, in which a homicide might be committed, without the wish of obtaining, or the fear of losing, guiding the hand of the assassin; and it is this: when the assassin has been reduced by a criminal or wretched demency, to that state of desperation, whereby he looks upon the person on whom he meditates assassination, as the sole cause of his having been deprived, of every thing that could make life dear to him, and even of the hope of ever attaining any thing, by which to find life supportable (1). If the laws and the legislators were able to distinguish from positive characteristics this case of homicide from the others, I feel satisfied they would not punish it.

(1) Charlotte Cordais offers an example of such homicides; the assassination of Belsunce had left her a forlorn being without hope, and without attachment to life; Marat led her, by villainously impeaching the reputation of the assassinated lover, to believe, that he was the person, who caused all her losses, and who prevented her, by tarnishing the good name of him, with whose spirit she lived, from ever attaining any thing, by which to love life! Her hand stabbed the heart of the tyrant, because she knew that the axe would put an end to her hopeless existence.

I must still persist in this, that all assassinations, except perhaps those, which are urged to by a predominant passion, or any madness whatever, are perpetrated for the purpose of taking life, either from him, who could cause one to be deprived of a property, which he unlawfully possesses, or from him, at whose property the assassin aims, whether by inheritance or robbery, or from him, who might prevent the assassin from obtaining that, at which he aims, or finally from him, to slay whom the assassin is to receive a price (1). The laws themselves, considering how much influence the wish of obtaining exercises upon him, who possesses nothing, punish with death both him, who perpetrates the crime, and him, who pays the price for its

(1) Whether the kind of assassinations, which have been so frequent in times not very remote from ours, were common to ancient people or not, it appears, according to many historians, (one of which is Gibbon, I believe) that the killing a man by mandate was resorted to by the bigotted and zealous Christians of the East, a few centuries after the revelation of our religion. The *grassation* of the Romans would only correspond to what we call highway robbery. *Assassinio* in Italy and in the East was made use of to distinguish the kind of homicides, which were commanded by one and executed by another. It was called *assassinio proprio*, when the mandate, coming from a Christian bishop, was executed upon a heathen ; *assassinio improprio*, when the murdered one also was a Christian. The ancient history of England, particularly after its conquest by the Normans, furnishes many instances of such homicides. A voluntary assassination was that of the primate of England by three knights, who sailed from Normandy in order to free Henry from the vexations of that prelate.

It appears, however, that it has not been ascertained yet whether the Eastern bishops were wont to pay a price for such assassinations.

perpetration. If the laws should punish only with banishment, or temporary confinement (determining, if thought necessary, the period of time, within which he might be admitted to disclose the transaction) him, who perpetrates the crime, and then, with death, him, who offered, or paid the price for it, they would, perhaps, be more successful in preventing such crimes.

Thus this being the case, that one, or both of them, who fight a duel, think it to be the sole means, by which to preserve one's honor, if impeached, or to recover it, if taken from him, it follows that the laws ought, before all, make such provisions, as would guaranty to all men that dearest possession of the state of civil society. It is but after the laws have secured to all men that possession, that they may aim at, and succeed in, preventing a crime, which tends to nothing else but the preservation or ricuperation of one's honor.

In my essay on the practice of duelling, I have spoken of the material causes of duelling, and in the before going chapter, I have shown, I believe, that some offences ought to be punished as the physical causes of duels; now I wish that it should be inferred from what I have said, how unfounded the supposition is, that this method of shedding blood in order to atone

I should be inclined to believe, that the practice of paying a price for the murders committed in consequence of a mandate was introduced by the Norman barons and the Italian princes, at posterior times, when by their power being weakened, by the rising of powerful kings, they resorted to assassinations in order to secure successions, or to free themselves from the danger of being dispossessed of their lands by one who had a just title over them.

for offences either done to us, or by us done, was bequeathed to us by the ancient barbarians. In times of real barbarity duels were unknown, though they will always be highly in use in a state of imperfect civilization; because it is in such a state alone, that the ferocity of barbarians is submitted to rules by selfishness and cold speculation.

The practice of duelling, such as it now exists, proceeds altogether from the abuse of civilization; though it was occasioned by the imbecility of princes, the malice or negligence of magistrates, and the tyranny of the laws! Let us have laws which will, in no respect, be tyrannical, and then every one will, or shall obey them! Laws are tyrannical, when they cause not all men equally to fear them.

Again; we ought entirely to desist from idly unfolding the pages of ancient history in order to find the origin of such practice; because we shall ever blush for the sake of our polish, as long as that practice is preserved amongst us, although Hannibal and Scipio had been the first to fight a duel. Ancient knights, the knight-templars not excepted, rose from among the disorders of civil society; and perhaps we had never had knights, but for the want of positive laws. Knights, at those times having no other riches, than their arms, and no more power than their skill in arms, were liable to be imposed upon, and abused by princes and lords, who had arms, power, and followers. Taught by their own experience, and made wise by the always impending danger, they aimed at resisting, united, that power, which they could not withstand individually.

Wherefore urged by the necessary wish that dwells in every human breast, to avert ills, occasionally will have lent one another succor; hence, uniting themselves under the discipline, which circumstances required, and binding themselves to lend one another succor, they organized themselves into a partial society, which, like a new social compact, grew still more perfect from among the imperfect civilization of those times (1). Hence the taking off the glove of the right hand, and throwing it before the by-standers, were more intended to show him to be a knight, who thus threw his glove, than to give a challenge; signs, which, at the time they showed such a warrior to belong to the knighthood, made princes more circumspect in offending him, lest the whole order of knights should assume to themselves the revenging the offences done to a knight. Hence came the practice of single combat; because knights did not consider it to be doing another violence, if one, by the means of his physical strength, personal courage, and skill in arms, should

(1) Hume says, "Yet are the incidents, which attended these hostilities so frivolous * * * * * * * * * * * * * * a certain proof of the extreme weakness of princes in those ages, and of the little authority they possessed over their refractory vassals. * * * * * * * * * * * * * Philip insisted, that, if a general peace was concluded, the barons on each side should be prohibited from carrying on private wars against each other; but Richard replied, that this was a right claimed by his vassals, and he would not debar them from it." This well shows how imperfect the laws must have been, if princes were under the necessity of permitting their vassals to decide by open wars, their quarrels.

desire to seek revenge for an offence done to him; and therefore knights were bound not to lend any succor to the knight, who was to withstand the valor and personal bravery of one man. And the knights meddling not in the quarrels, which were fought in single, and just combats, it followed that the lords, who were both robust and skilful in arms, thought it safer to rely on their personal virtue alone in assaulting a knight, than to provoke the revenge of the whole order by assaulting him with followers, who would by no means prove a match to the valor and discipline of the knights.

According to human nature, knights ought to increase in virtue at times, in which valor in arms was the only positive law; and so they did: since virtue will ever grow from under discipline: and it was consistent with their virtue and discipline, that the assault made by one with followers, or any other advantage, upon another, who had not the same means to protect himself against aggression, should be held to be a proditorious, and base action.

But these knights ought to, and did in fact, degenerate, when laws were caused to be enacted by the progress of civilization: and thus wars rendered less necessary, and peace more acceptable.

Then the profession of arms was restored to the hands, whence the knights had taken it; and knights in their turn were mercenary. And as the love of gain causes virtue to be extinguished, valorous and high-minded warriors shrunk from that order; and as booty was the aim, and the reward of their exploits, generous souls held it dishonorable to be a knight;

and as the eagerness of gain is differently favored, and never satiated by plunder, it causes all discipline to be shaken off; wherefore knighthood went fast declining, since no human institution can be caused lastingly to flourish, except by the maintenance of discipline and the practice of virtue. Knights, living at the pay of a prince or a leader, had but their pay, and their plunders, wherewith to live; hence their rashness proceeded; hence their eagerness in espousing the quarrels of their masters.

Every body will now concur in my opinion, that such knights, as fight their quarrels, and those of others, should not exist, or at least cannot be tolerated, amongst civilized people; because amidst civilization, where the laws protect all citizens, we are never to be placed under the necessity of revenging the offences done to us, by means of our physical strength: wherefore I say, that knights, who undertake, under a color whatever, to revenge, on their own account and by their personal ability, theirs, or others' offences, are not to be tolerated, unless we purpose to make ourselves barbarians by means of tyrannical and stupid laws.

Seen what are the moral and physical causes of duelling, what is the remote cause of those causes, and what are the wicked effects of the practice of duelling, it appears to me, that one might, with surer steps, proceed to unrooting from amidst civilization a crime, which, far from being a remnant of former barbarity, unknown to uncivilized barbarians, is the boast of civilized ones.

I apprehend that one reason, a positive one, and perhaps the only one, why men's efforts to prevent crime have always proved unsuccessful, is, that legislators, when they have to enact penal laws, never aim at any thing else, but to punish crimes. It is due to the privileged creation of an Almighty God, that wise men and legislators should meditate upon the present state of society, and endeavor to clear the paths, through which all men are to run, from those causes, of which crimes are the necessary, and most sad effects.

Legislators and jurists should satisfy themselves, how in vain it is that they torture their minds upon the speculative question, whether cruel or mild laws are to prove more efficacious to prevent duelling. The laws, which consider the crime of duelling, must be in a perfect conformity with all the other criminal laws of the commonwealth. If the penal code of a nation contains but cruel laws, the laws also, which relate to duelling, are necessarily to be cruel; and those, too, which consider the physical causes of duelling. Since it will always be swerving, and even ridiculous, that the laws punish him with imprisonment, who steals a dollar, and then fine him in a few hundred dollars, who commits depredation upon one's honor. It will always be inconsistent with human nature and polish, to have him punished with death, who waits for his victim, and perpetrates a homicide, and then have him fined in a few dollars, who coldly waits for the object of his anger, and villanously assaults him, and takes from him his moral life, honor. As long as the laws of a civilized people are intended merely to protect

the physical property of men, they will be barbarous, and will always prove inefficacious to prevent crimes. As long as legislators will make the fear they entertain of certain criminal actions, the common measure of the abhorrence of crimes, they will fail in their attempts to prevent crimes, and will unjustly punish the perpetrators of those actions (1).

It is necessary to have the laws, which are enacted against duelling, and its physical causes, inserted into the penal code of a nation, as indigenous plants, if we wish to prevent, or at least effectually to punish that crime. It is necessary that the law, by means of national discipline, causes national habits to grow uniform, and then that it preserves, by means of the censorship, those habits, if it aims at obtaining a common measure of the abhorrence of the whole community for that crime. It is by so doing that criminal laws will always be successful in punishing crimes; because if crimes arise not from the imperfection of the law, the guilty will never escape punishment.

If discipline is uniform, the education of youth also will be uniform; and if young people receive a uniform education, the opinion which they will express when reaching manhood, will be but one; and, if discipline derive from the law, national habits from discipline, and public opinion from national habits, it will neces-

(1) He, who possesses nothing, and he, who possesses millions of dollars, will differently abhor thefts. He, who possesses much, may easily conceive the great inconveniency of stealing something; while he, who wants every thing, can scarcely imagine that it is unduteous to provide for his wants. See p. 6, Essay on Duelling.

sarily follow, that public opinion will be in uniformity with the law; and thus society, by enacting wise laws, will have established a common tribunal, which shall pronounce upon the actions of all citizens.

But if legislators, entirely disregarding the welfare of the human family at large, should exclusively intend to enacting laws, by which either to prevent, or to punish, duelling and its physical causes, yet leaving all the other criminal laws as they are now heaped, and taking no notice of our morals and habits; it will, withal, be necessary, that, instead of adhering to theories of men, however excellent, they avail themselves of the experience of after times, and fly from those means and provisions, which, whether excellent or not, in the abstract, have proved unavailing in the practice both, to prevent, and to punish, those crimes.

In the twentieth note of the Essay on Duelling, I have spoken of the uselessness of those laws, which consider the challenge a crime, and punish it as the principal violation of the law; now I wish to say; that to punish the challenge as a great crime, and then slightly to punish duels, and even not to punish duelling, or only in its tragical effects, have been the causes by which the outcried, yet unwarily protected, practice of duelling has been, and shall be, for ever perhaps, maintained amidst civilization. Because the law holding the challenge a crime, every thing that relates to the challenge, is carried on with the greatest secrecy, and by means of persons, who necessarily are subject to public opinion, and such as public opinion would hold dishonored, if, in any way, magistrates

were to be apprized, through their means, of the challenge given. If the law should not take notice of the challenge, the challenger would proceed with less caution, as well in the choice of him, or them, who are to carry the challenge, as in the mode in which the challenge is to be given; and thus the magistrate himself, or the officers created by the law to prosecute the guilty, would, in all probability, hear of it, and arrest, or cause to be arrested, the parties, while making themselves ready for the combat.

We have seen that to punish of those, who are concerned in the transaction of a duel, the aggressor alone has been the cause of inventing fraud against the law; and that to punish the whole number has been the cause of sneering at the law; then let us fly from both extremes.—Nor do I think with the philosopher of Louisiana, that the law might successfully force one of them, who assisted in fighting a duel, to appear as witness against the parties, and their assistants, provided he shall not be punished, who gives evidence for the conviction of the violators of the law: because such a provision would, soon or late, force them, who are to be concerned in such transactions, to resort to the fraud of the first extreme; and thus binding themselves, by a voluntary oath, never to appear as witnesses against them, who fight, or assist in fighting a duel, they ever will, in accordance with our notions of the oath, violate the law, in order not to perjure an oath, the more binding, the less they were compelled to take it. Why should we not attempt to distinguish the principal violators of the law from

them, who assist in the perpetration of that action, by which the law is violated? That is, why should not the law hold them alone guilty, and equally punishable, who violated the law, by fighting a duel?

I cannot, in any measure, yield to the so commonly repeated maxim, that assistants, witnesses, surgeons, etc. are to be held as guilty as the principal parties, because without their interference the duel had not been fought. First I ask; has this maxim so far enabled us to prevent duels being fought (1). No! on the contrary they have been made more frequent; because by increasing the number of those, who are to be held guilty, and punished, the necessary boldness in applying the severity of the law was taken from the magistrate, and lent to them, who thought their honor to require, that they should violate the law; besides that, the means created by the law, to pursue the guilty, have been made inefficacious. Had we not better exclaim, *contrary to that unavailing maxim*, if duelling was so punished, as duellists, fearing the penalty established by the law, should *not wish* to fight, there would not be *assistants* etc. *to be punished* as violators of the law?

(1) Besides that, the maxim alone ought to be followed, by which society was to be practically successful, not only to prevent duels being fought, but also to protect citizens against the occasions to fight a duel; because, indeed, it affords very little comfort to him, who has been abused, that he has to bear the insult, merely on account of the law, which forbids him to seek revenge. Such a law would but protect the immoral man, who abuses, or offends, another, while it compels honest and peaceful citizens to bear insults.

They, who assist in fighting a duel, would, no doubt, consider it a greater punishment to depose, in obedience to the laws of their country, against the parties, to whom, most generally, they are, either kinsmen or friends; since they, being not held guilty, could not refuse to give evidence against the parties. So far from the practical truth is the assertion, that the fear of punishment alone can deter men from assisting in such combats, that we always hear of supernumerary witnesses, who assisted to a duel fought, whilst we see all honest and peaceful citizens, carefully to avoid being witnesses to a quarrel in the public squares, only for the apprehension of being called upon to give evidence.

The law should consider three stages, or different degrees in the crime of duelling: 1st. When the parties have been arrested, while on their way to the place appointed for the combat; 2d. When they are arrested in the act of, or about, fighting a duel; 3d. When they have been apprehended after the duel has been fought.

Let us lay aside the exalted, and unavailing ideas of homicide, and assassination; let us not measure the enormity of the crime from its eventual, though atrocious effects; yet let us have duelling punished as a qualified crime determined by an express and positive law. Let us remind that both the combatants have equally violated the supreme law of civilization, whatever be the issue of a duel; because they have recalled to themselves the physical strength, which all men,

living in a state of civil society, are deemed to have consented to renounce to the law.

If duelling is differently to be punished according to the different issue of duels fought, they will hope for the least criminal issue, who are inclined to fight a duel; and therefore they will be less cautious in rushing to the combat. Nor would it amount to any thing to say, that no man can reasonably hope from chance; because they, who fight duels, could retort, that it is as reasonable to hope from chance, as to measure the enormity of a crime from its chanceful issues.

But all laws, even the wisest, and the most humane ones, will prove useless, and even pernicious, if the means are not created, which arm the laws.

MEANS TO RENDER THE LAWS ARMED.

"The law should never command more than it can enforce!" says the Senator from Louisiana. And thus he admonishes legislators to think of the means, by which to have the laws executed, before they enact laws. That is, laws are to be armed, if they are at all to be enacted.

The laws may be efficaciously armed in two modes: 1st. Usefully to choose the means, which the law may have at hand, in order to have the violators of the law brought before their natural judges; 2d. To provide so, by means of laws, that criminals will always, and inevitably, be caused to suffer the punishment, established by the law.

In a just and well organized government, where the law alone commands, and all citizens obey it, there are two means, (as it is said in the second chapter,) by which to render the laws armed: 1st. The officers created by the law to pursue, and to arrest, criminals; 2d. The accusations by free citizens. The officers should have invested in them the right to accuse, and to bring, in the stated cases, the violators of the laws before justice; and be commanded by the law, under a specified responsibility, to accuse, and to arrest, criminals: free citizens should, as such, feel bound to lay accusations against the perpetrators of criminal actions; yet the laws should direct so, that accusations should be laid in an open, and frank way, and the accuser *bona fide* should not be holden responsible for the accusation laid.

In many and different ways these means may be weakened, or rendered useless.

The second means is rendered entirely useless by the rewards, or premiums, offered for the apprehension of criminals; because if there are persons, who are led to accuse the violators of the law, by the hope of reward, honest people will scorn the idea of being suspected of venality. The uncertainty of the penalty, or the non-application of the law, will weaken this second means; because no honest and peaceful citizen will give himself much trouble, and do injury to another, if the crime one has committed might be considered but a misdemeanor, as far as punishments are to be the measure of the enormity of crimes; nor will any one make himself liable to have his care declared,

either gratuitous, or prejudicial to others, by a magistrate, who applies not the law, or wishes not to give himself the trouble, necessary to have the accused convicted.

Rewards will always weaken, and often render useless, the first means; because if magistrates and private citizens may, and choose to offer rewards for the appehension of those, who have perpetrated criminal actions, the officers, created by the law to prosecute offenders, will, and this for their own sake, stand looking until a reward is offered; and meanwhile criminals will have the opportunity to fly; and if they are arrested, it is probable, they will be arrested by any other person than the officers.

The uncertainty of the punishment, and the non-application of the *law*, weaken the first means also; because the officers, after a short experience, will prefer not to molest the guilty, rather than to undertake, by pursuing them, a labor, which the enlarging of the persons apprehended, declares useless.

So far as rewards are to be compared to the price set upon the head of a citizen, we may learn from the following passage of Beccaria, how prejudicial they are to both, public morals, and domestic peacefulness. "But the laws, which reward treachery, and excite a secret war, which spreads a mutual suspicion amongst citizens, are opposed to the necessary conjunction of morals and politics; a conjunction to which men should owe happiness, nations, peace, and the whole world, some longer intervals of tranquillity and respite from the evils, which hang in clouds about it." And

although we have not to apprehend so great disorders from the above mentioned rewards, nevertheless it will be too true, as Beccaria observes, that, "the legislator endeavors with one hand to approach the ties of family, relationship, and friendship, while with the other he rewards him, who loosens those same ties (1).

I am unwilling now to undertake to argue of the pernicious influence, which rewards must, by their frequency, exercise upon any government, however well established; nor would I now attempt to show, that many a time, because of these rewards, we see innocent persons to be brought before a court, and submitted to trial, notwithstanding that the laws, which authorize, or permit, the practice of offering rewards, have no other compensation in readiness for the honest citizens, who are subjected to such inconveniences, but the heart-rending acknowledgment, which they are compelled to express, if so fortunate, as to be soon enlarged. And this I wish not to do now; 1st. Because I fear to be led astray from the subject; 2d.

(1) Rolin concurred in the same opinion with Beccaria, that a civilized society should by all means be caused to enjoy a perfect peace, and the fraternal love, which society inspires in all its members. "This (the worshipping animals) was the source of the continual wars which were carried on between one city and another; and this was owing to the false policy of one of their kings, who, to deprive them of the opportunity and means of conspiring against the state, endeavored to amuse them, by engaging them in religious contests. I call this a *false* and *mistaken policy*, because it directly thwarts the true spirit of the government, the aim of which is *to unite all its members in the strictest ties, and to make all its strength consist in the perfect harmony of its several parts.*"

Because I feel not confident, that my little ability would suffice well to speak upon the subject. Yet I feel satisfied, that rewards have a powerful tendency to render one of the abovenamed means useless, and to weaken the other; particularly so, because the laws would but in vain attempt to offer an equivalent indemnification for the vexations, to which innocent persons are often submitted by the eagerness of those, who aim at obtaining rewards. Since such people, as accuse, or molest another, on mere account of a reward offered, are most generally deprived of property; and the sending them, who falsely or unwarily accused, or caused to be apprehended, one, who was not guilty, would afford no solace to him, who was unduly molested. The laws might make them responsible, who offer a reward, for the inconveniency it causes to others; but then the laws could as well make it unlawful to offer rewards.

There are three causes, whence the uncertainty of the penalty derives; namely, the impunity, which the law grants to a culprit, the latitude, which the law leaves to the judge in the application of the penalty, and the right of pardon.

THE RIGHT OF PARDON.

Great spirit of the true Father of a great people, kindle within my breast the love of country, which caused him to prefer to mourn a childless father, rather than see the generous people, who were ready to forgive the whole

number, not to punish the sons of their liberator, mourning upon the ruins of their new-born country.

Macchiavelli says, that "the severity of Brutus was not less necessary, than useful, to preserve to Rome the liberty, which he had conquered for her * * * * * * * * *; after a change of government, either from democracy to tyranny, or from tyranny to a popular government, a memorable execution against the enemies of the present order of things is necessary." (1).

(1) It would be but idle to discuss in the abstract whether this maxim of Macchiavelli be consentaneous to the absolute principle of the moral, or even to the positive morality of the Christian religion; because a revolution tends, either to overthrow a government contrary to those principles and morality, or to establish one contrary to both, the principle, and the morality. No doubt that it might be resorted to some means, by which to prevent blood-shedding; yet, so far, modern revolutions have but borne evidence to the veracity of that maxim. At about the end of the last century, Louis XVI. was prevailed upon to wear the constitutional cap; yet his readiness, in complying with the wish of the constitutionalists, served only to apprize men of the liableness of the laws to be violated; and Louis fell a victim upon the altar of factions; and the enemies of the new order of things were as free to conspire against it, as the friends of it had been against the old system of things; and blood was spilt, until the warm friends of the old system had abandoned the French territoy, and the true friends of the new order of things had cemented with their blood a rising throne; this to make way for the old system of things. The friends of the old system have only by half followed that maxim of Macchiavelli, and the friends of the new order of things have again deprived them of the government. Yet the French people, from their past experience, have only learnt how to violate the laws; and the present system of things in France, not

Little acquainted with the intricate paths of politics, I can but subscribe to the opinion of the great Florentine secretary: yet, even admitting the necessity of an extraordinary execution after a material change in the form of government, I do believe, with regard to the action of Brutus, that the execution of the conspirators, against the newly established form of government, more served to inspire men with the due fear of the laws, which every man learns to disregard by the mere fact of a revolution, than to secure the issue of the revolution itself; because Brutus set forth the example

secured by the fear of the law, which every man should have abided in his bosom, will clear the way either to despotism, or to new disorganization, and to civil and foreign wars. Riego and his consorts boasted of a revolution, which cost no blood; yet they and the warmest friends of liberty fell the necessary victims to the restoration of the former despotism. The revolution of Naples might be likened to a victory of Italian boys on a fair, it ended with the removal of the booths! Yet blood was necessary to fill up the holes, where the booths stood. The revolution of Piedmont, sooner conquered, than accomplished, required the spilling blood in order to efface its traces. Revolutions, whether made in accordance with the universal principles of the moral, or not, are always the consequence of a new party rising against that, which rules, and therefore the conquerors must always take from the conquered the ability to rise again; if they do not, more blood will be ever spilt by the reaction of parties, than it would be necessary to inspire men with the necessary fear of the law. No government is durable unless the law is universally feared!—But this would not authorize legislators to introduce executions, as penalties established by the criminal laws, which compose the penal code of a nation; because a penal code is to govern men in time of peace; and therefore regards citizens individually, and not parties. See Pun. of Death.

of the unchangeableness of the laws, and consequently instilled in the Roman breasts both, the fear of the laws, and the abhorrence of tyranny. And the abhorrence of tyranny grew so strong in the Roman breasts, that the same Roman people, who absolved the murderer of his sister, condemned Manlius to the fatal throw from the Tarpeian Rock; though the former had conquered for Rome a benefit, which, to enjoy, she ought to preserve by means of virtue, while the latter had preserved to her a greater benefit, life.

"Thus clemency, (it is Beccaria, who thus speaks,) that virtue, which has very often been to a sovereign the supplement of all the duties of the throne, ought to be banished from a perfect legislation, where punishments are moderate, and the mode of administering justice, regular and speedy."

It has long been a subject of controversy whether the fundamental laws of a nation ought, or even could sanction, or create the right of pardon. The Northern barbarians, who were wont to obey a law, when princes were able to force them to obey it, appear to have sanctioned, or at least caused it to be admitted, that the will of the prince shall be the supreme law. But for this derivation of the right of pardon, it could hardly be accounted for, why we are to have laws, if one man is to have the faculty of annulling them, by absolving, by a simple act of his will, and pleasure, him, or them, who violated the laws.

I, indeed, cannot conceive why people are so eager to revoke to themselves the right of making the laws, when it has been usurped by one man, or by the few,

if afterwards, by an act of their free will and choice, they cause all their labor to be wasted, by vesting in one man the right of having them continually violated?

The French legislators showed a great propensity to have the right of pardon severed from the attributes of sovereignty. At the time of the French empire the sovereign himself had not faculty to pardon the guilty, who were condemned by a sentence of the said *corte speciale;* except the case, in which the sovereign himself had chanced to pass through the neighborhood, where the criminal was to be executed. The emperor of Austria also, by creating the "*giudizio statario,*" has renounced the right of interfering with the execution of the sentences emitted by that tribunal.

That, to which the philosopher is scarcely able to reconcile himself, is, why republican people show themselves so eager in preserving in their legislations the right of pardon; since it is just in republican governments, where laws, being supposed to have been enacted by the general consent of the whole people, should *per excellence* be the absolute sovereign.

However, ancient people were not so inconsistent as the moderns are; with them the people, who had made the laws, were held to be the only moral being invested with sovereignty; and accordingly attributed to themselves the right of exempting from punishment the violators of the laws; or in other words, the right of undoing the laws, which they had made. Manlius appealed to the people, and not the consuls, as it is practised among modern people. Though that same fact would by itself admonish us of the ill consequences,

which are to be apprehended from that attribute of sovereignty, and lead people to know how pernicious the right of pardon may prove to be to those people, who wish by all means, to have it preserved. Because we read in the Roman history, that notwithstanding the inborn hatred of the Roman people for tyranny, it was yet necessary to bring the Roman *plebs* out of sight of the capitol, in order to have Manlius, who wished to make himself a tyrant, condemned.

The vesting the right of pardon in the person, who is charged with the execution of the laws, is, it appears to me, contrary to the very principle, in whose accordance such a magistrate is created by the laws. It is, no doubt, contrary to all received ideas of sovereignty; since we can hardly imagine how people may wish to be the sovereign in making the laws, then to choose vesting in one man the faculty of undoing, in contempt of their sovereignty, the laws, which they, the sovereign *de facto*, have made!

There is no reason to wonder, that in a monarchical government, the sovereign should wish to, and does practically, attribute to himself the right of pardon; because, if the law emanates from the will of the prince, the nullity also of the law may emanate from that same will: nor is it to be wondered, that the patricians should, in an aristocratical government, cherish the right of pardon, because they, who both make the laws, and cause them to be executed, ensure to themselves, by that means, the right of violating with impunity those laws, which the people are forced to obey: yet it is much to be wondered, that in a

popular government this right is not only preserved, but vested in one person, who is subject to the law.

I indeed feel as if I were reluctant to make my ideas manifest with regard to the preservation of this attribute of the sovereignty, which we deem either vested in one person, or existing of right in the people. Nor do I entertain any hope, that so doing will entitle me to the thanks of the human family at large: yet, as any attempt will always fail to correct, from their very root, evils, which must recognize some causes, if we endeavor not to discover the causes of those lamentable effects, against which we aim at protecting ourselves, I wish to recal to the mind of the reader what I have said, where I have spoken of those, who have to make the criminal laws.

I have led the reader to observe, that it is with them, who make the criminal laws, that the fear of being offended, is greater, than the wish to offend; now I wish to remind the reader, that they also, who make the laws, are men, and, therefore, liable to sin, and to yield to the occasions of crime: wherefore, guided both, by the fear of being offended, and the apprehension of becoming the violators of the laws, they enact, they intend to protect their property by the cruelty of the laws, and to escape punishment by the right of pardon. The common people most blindly fall into the snare by the very act of preserving the right of pardon, as an attribute of sovereignty; and particularly, by vesting it in one man; because their names being either obscure, or unknown, they will be caused to suffer the penalty established by the law, before the

one, who might pardon them, is made acquainted both with their names, and their circumstances, then to feel inclined to exempt them from punishment.

It is due to their good intention, and to the purpose of this work, to acknowledge, that this fatal effect, almost the end of the right of pardon, was not to be apprehended, or desired, by the first framers of criminal laws; yet, in order to obtain the real aim, and to be consistent with the purpose of these writings, it will be necessary, that I attempt to investigate the real causes, whence people have been so sanguine in their efforts to have the right of pardon maintained among them.

The French, towards the close of the last century, exhibited to the world a rare example of true civilization; that is, they reduced into one body all the laws, which ought to govern the French nation, rendering its comprehension plain to every man. They, following the guidance of the Roman legislation, and supplying, aided by the wisdom of those French jurists, who were chosen to redact the old laws, the necessary laws, gave to the world a code, in which all human actions, which bear relation to others, were considered; and thus they succeeded, by calculating all the circumstances, which either impel, or make man liable, to crime, in having erased from their legislation the immense latitude, left to the judge in the application of the laws, and in rendering the right of pardon unnecessary.

Austria alone can boast for having followed the luminous example of France; (the more to be regretted,

the less that nation is enlightened, since other nations only show, that even knowledge is to prove fatal to the poor!) and on the first day of January, 1816, she promulgated a universal civil code, and a short time after, a penal one. Although the criminal laws were not all new, nor all humane; and although penalties did not preserve a just proportion in themselves, nor show a rational measure in defining the enormity of crimes; yet the penal laws, comprehended in the Austrian code, did not offer so many inconsistencies, nor so much cruelty and uncertainty in the penalties, as are to be met with in the laws made without provision, on a certain occasion, and then amassed, rather than embodied, with the other penal laws of a nation. The Prince of Austria, reserving to himself the right of confirming sentences, before their execution, has wholly rendered the right of pardon useless.

England, the living compendium of all human excellences, astonishing the world by her majestic men of war, and her numerous fleets, bewildering the minds of all men by her intrigue-like, and calculating policy, and subjecting every thing, men and cattle, honesty and commerce, to the impassible ciphers of an active and secret exchequering, has set forth the unaccountable example of human impassiveness. Walter Scott, an emulator of a Great American, applied the power of the newly discovered steam engine to a moulded imagery, which, like the supernatural barge, that carried the deliverers of *Rinaldo* to the retreat of *Armida*, brought him, in spite of the winds of verisimility, across unexplored seas, to discover the homogeneous

food to his intellectual contemporaries, in the history of the rude habits, and barbarous feats of the subduers of the Scotts and the Pits!—The whole population of England, as if acted upon by the *Voltaan spark*, incessantly run after Scott's novels and histories. There, alms-houses and prisons, hospitals and gallows, are the refuge of the indigent and numerous portion of the community, while the rich man, as if he were the man of Voltaire visiting a minor planet, feels entirely unconcerned with the sufferings of expiring humanity. There the loco-motive engine drives, at the speed of 20, or 30 miles an hour, the minds and the bodies of those, who draw, with the same velocity with which they are driven, the necessary bread from the convulse mouthes of the poor: if they can but succeed in finding the ærial compass, we shall see all the pangs of living nature converted into fuel, to afford steam for the amusement of stored wealth!

Yet, England has religiously preserved, down to this present age of civilization, the loyal laws of Alfred the Great, the savage of Canute, the oppressive of William the conqueror, the inconsistent of the Henries, and the treacherous ones of Elizabeth; the whole of them in a great bulk, without having ever attempted to apply the least power of a steam-engine to clear from the incumbrances of past barbarity her penal code, if she can, consistently, be said to have one.

The rignt of pardon, and the cause whence it derives the cruelty of the laws, as yet govern the whole of civilized Europe, are owing to the ferocity of the

Danes, to the meddling of Priests in civil concerns, and to the unsettled governments of those people, whence we derive our laws. Princes, as fierce as ignorant, were wont to make laws for every, and each occasion; and these laws being neglected, when the occasion, for which they were enacted, had passed, and never repealed, by the enacting new ones for similar occasions; bearing, besides, the stamp of the ferocity of the times, in which they were enacted: the right of pardon was deemed to be the only means both, to correct the inconsistency of the laws, and to prevent cruel punishments; and as such, it was sanctioned; and as such, it is revered by the sons of modern civilization.

Undoubtedly the right of pardon, and the immense latitude of the same penalties to be applied to different crimes, can be held necessary only among those nations, where the people are careless of themselves, and legislators repine at the least labor. Let cruel and inconsistent laws disappear from among our heaps of laws, and the right of pardon will be no longer necessary; let all human motives, which may be leading, or impelling, to crime, be calculated, and the immense latitude of penalties, as left to the judge, will be caused to disappear from our legislations.

Legislators, wishing not to be, either wise or active, hope to find in others the wisdom, and the love of labor, which they decline to have. To have the right of pardon sanctioned by the law amounts to promulgating the cruelty and the inconsistency of the laws: to

leave an immense latitude to the judge in the application of penalties is to render the indolence manifest of those, who caused such laws to be enacted.

How many times we see a law to be enacted, which establishes a different penalty, from that, with which the same crime was punished, by a law not repealed by the new one, from immemorable time unobserved, and now forgotten, yet, thanks to our notions of the jurisprudence, still living, though entirely useless. It is but a few years since we heard of an instance, in which a Nobleman, a native of the celebrated land of this age's civilization, was entitled by the law to prove the validity of a title by means of a duel! And from what does this proceed? From the heedlessness of the people, and the indolence of their legislators!

I beg leave to repeat it once more, all around us speaks of civilization, except our criminal laws. A modern penal code might be considered an illustration of the chaos, which the creating hand of our Maker distributed to a world.

We speak of certain people of the middle ages, pointing them out as barbarians, yet their criminal laws are the most consistent, and, what we should blush to testify to, the only humane ones, which grace our criminal legislation. Our jurists, to become versed in criminal matters, have to spend all their life-time upon the criminal laws of their country. We might compare our excellent jurists to the learned Antiquarians, who go travelling through loathsome deserts to discover the burried remnants of nations, who only live in History! And yet criminal laws ought to be

of easy comprehension, and clear, not only to the learned jurist, but to the idiot too; and particularly so to that class of men, who, the less they are learned, the nearer are regarded by those laws. "Penal laws should be written," says Senator Livingston, "in plain language, clearly, and unequivocally expressed."

Reducing all *what has been* said to a few words, I say: that in order to persist consistently, on having the right of pardon sanctioned by our fundamental laws, it is necessary to suppose, either the laws cruel, or men desirous to have them made tyrannical. Because, if laws are cruel, legislators, rather than give themselves the trouble of making the laws anew, will think it to remedy their cruelty, the making them useless, by means of the right of pardon. Let laws be cruel, or mild, they will always be caused to become tyrannical, whenever their execution depends upon the beneplaciture of one man; because laws may be tyrannical in two ways: 1st. when they regard only a certain class of citizens: 2d. when their empire is exercised through means of the will of one, or a few individuals.

LATITUDE OF THE PENALTIES.

The greater the latitude is, left to the Judge in the application of the penalties established by the laws, the more pernicious it is. Because the laws place, in consequence of that latitude, the Judge in a situation, where he ever has to apprehend reproaches, whether he applies the greatest, or the least punishment, or the

mean: hence he is caused to lose, in part at least, the honest boldness, which a Magistrate should always show in causing the severity of the law to be met by its violators. The Judge, too, is a man, and as such, he must live in society, and be united to it by all the ties, which, derived from blood and friendship, lead men to the sweet intercourse, which makes life delicious to us: wherefore, it will happen, (and this proceeds from our very nature,) that they, who are placed in circumstances, which make them liable to crime, will fear less the severity of the law: because, they, on account of their condition in life, relationship, and connections, will always entertain the hope of meeting but the least severity of the law. If we add to it that the majority of a community desume the enormity of the crime, from the severity of the punishment inflicted upon the perpetrators of it, we shall easily perceive, what a great moral evil we have to apprehend from that latitude. Besides, they who petition for pardon, and he, who may grant pardon, will always feel inclined to supplicate for, and to grant pardon to, him, who hardly appears to be guilty, if his criminal intention is to be desumed from the penalty, to which he is subjected. Yet this apprehension would cease, if legislators would but love labor, and take for themselves a part of the trouble, which they require judges to have!

Speaking of those, to whose choice is left to lessen, and to increase, the severity of the punishment, or to pardon the offenders, I have supposed the whole of them to be honest men: if it be advisable to place

men in circumstances, which make them liable to prevaricate, even through the best intentions, I leave it to legislators, and to the wise and the well-wishers, to decide, for I am far from deeming myself "*wiser than the wise.*"

IMPUNITY.

Finally, the impunity, as granted to one, who concurred in the violation of the law, contributes, though in a lesser manner, than the right of pardon and the latitude of penalties, to render laws unarmed, and consequently useless. Because, if the violators of the laws cannot, or are not caused to, be brought to justice, the laws will be unarmed; and, if the guilty are not brought to justice, and then caused to suffer the punishment established by the law, laws will be, by all means, useless.

Laws will always be unarmed, when, by their want of positiveness, and by their remissness, they deprive themselves of the aid of honest accusers; when they resort to other means, except the officers created by the law, in order to have the guilty brought to justice; and finally, when they do not protect the lives of those same officers against the revengeful hatred of wicked and unpunished men, by causing the penalty, established by the law, inevitably to fall upon its violators. (1)

(1) Besides, there is another great evil to be apprehended from the impunity to be granted, the example of secret managements, as often the laws are compelled to set forth, in order to have criminals

However, if this is our lot in our present state of society, and with regard to our criminal legislations, to have impunity granted to one, or some offenders, in order to have the rest secured, it appears to me, that

suffer the punishment that corresponds to their crimes. "What an example for the whole mass of the people would this be," says Beccaria, "if the pledged impunity should be disregarded, and if by means of learned cavils he should be dragged, notwithstanding the public pledge, to receive the fatal blow of armed justice, who answered to the invitation of the laws?"—The well known trial for the murder committed at Salem, though it was carried on with the utmost impartiality of justice, by means of just jurors, and an enlightened court, yet threatens to produce a sad moral effect. People know not whether the law has granted impunity, or not, and consequently express their opinion, more according to their own feelings, than in accordance with the law, which is deemed not to speak a positive language. A crime of the most woful nature both, in its conception and perpetration, has filled with horror, not only the unfortunate town, where those monsters, who perpetrated it, were born, but nearly the whole extent of this American continent; and the whole foreseeing mind of Providence, as if it intended for ever to grave in the minds of men the recollection of that awful transaction, permitted the principal party to destroy his own life, and removed to the abode of the righteous the undaunted chief of the tribunal, which was about to fix the doom of those, who were indicted for such a crime. And whatever be the result, it is now questioned, whether the confession, which, it is thought, served to convict the younger brother, shall be the cause of impunity to the elder, who made it; while people shudder at seeing the avenging rope to be twisted by the same hands, which were wont to open the book of revealed truth in the house of the Lord. "For it," adds the same Beccaria, "they are but too many, who have no other idea of a nation, than of a complicated machinery, of which the most skilful, and powerful men move the screws."

this would be advisable, to have the cases, in which impunity shall be granted, determined by the law; because then, they, who shrink not from the liableness to crime, would only hope for impunity in those stated cases; on the other hand, they would, though unwisely, and even vainly, hope for a probable impunity in all cases: hence, no means would be found to deter men from crimes there, where discipline is wanting, and laws are not feared.

Among those nations, where laws, by being constantly executed, are always feared; where, rewards being not offered, the guilty are always apprehended by the officers created by the law; where the violators of the laws, being invariably tried, and sentenced according to their country's laws, are caused to suffer the punishment, which corresponds to their criminal actions: there the two means, which arm laws, will never fail.

There is besides a remote, or rather organical imperfection, which renders all criminal laws unarmed; that is, when laws are not necessarily executed! That is to say, when the execution of the laws depend on the choice of them, who have to cause the penalties established by the law to be inflicted upon the perpetrators of crimes; in other words, when the laws have not created a Magistrate, who, by virtue of his charge, should attend to the execution of the laws. Because Judges, although liable to impeachments for misadministration of justice in their sentences, are not held responsible for their connivency in having the laws violated, when, either by their silence, or by their not

causing the laws to be executed, they suffer the violators of the laws to go unpunished.

There are three modes, it appears to me, by which, in a popular government, the unobservance of the laws may be obviated: 1st. by banishing all hireling accusers, and thus encouraging honest citizens, who always will, guided by their abhorrence for the crime, bring an accusation against the perpetrators of crimes, if they are not to be suspected of venality in so doing: 2d. by holding the officers, created by the law, responsible for their neglects, whenever they have not apprehended, or at least pursued criminals, though they might conveniently have done so: 3d. by creating a Magistrate, who was to be able, by the means put at his disposition, to cause laws invariably to be executed.

We find among the laws of ancient Egypt one of Sesostris, which established a severe punishment for him, who, being conveniently able to save another's life, had not endeavored to save it! Why should we not, following a humane, and we might say, so christian an example, worthy of all our civilization, cause a law to be enacted, by which they, who are employed and payed by their country, should be constrained to bring to justice, and to have them punished, who have offended society, or in other words, violated the laws?

I hope, that now, every body will easily perceive why all laws, which tend either to prevent duels, or to punish duellists, are unarmed, and useless for their practical purpose.

Those laws are unarmed; because the crime is not specified; because the number of the guilty is too great, and the degree of guilt of every one, who assisted in fighting a duel, too indeterminate; because the penalty is uncertain, since it depends upon the issue of the duel fought; because the perpetrators of that crime, may escape punishment, either by means of the right of pardon, or by that of the impunity, which might be granted; because laws against duelling being not positive, honest citizens feel much more to offend men, by accusing them, who were concerned in such transactions, than the law, by not accusing the guilty; because the officers, created by the law, either cannot suffice to apprehend all the persons, held guilty, or feel the revenge of men, whenever the law does not protect their lives, by causing all the persons apprehended always to suffer the punishment established by the law; because those same officers will be unwilling to give themselves the trouble of apprehending, or even pursuing, persons, who may afterwards be holden not guilty, or even pardoned; because Magistrates, who also are men, and live in a state of civil society, having the free choice to cause the guilty to be pursued, or to let them go unmolested, will always prefer to be friend with men, who alone can do them good, or injury, rather than with the laws, which are unable both to do them injury, and to protect them against injury; finally those laws are unarmed, because among modern nations there is not a Magistrate, who *ex-officio* attends to the observance of the laws.

Besides laws may be radically unarmed; that is,

laws from their very texture may deprive themselves of the means, by which to be both, carried into execution, and constantly observed. Laws are radically unarmed; 1st. when they are unjust; 2d. when the penalties established by them are either cruel, or unjust. Laws are unjust when, in making certain actions criminal, they follow not the measure of the injury, which the individual man in a state of civil society is deemed to receive from the actions, which the laws make criminal. The punishment is cruel, when it goes beyond the intensity, that is deemed necessary to indemnify society for the injury it has received, and to prevent the guilty from repeating the same offence before he has fully atoned for it: it is unjust in two modes; 1st. When it is not equally felt by all those, who have made themselves guilty of the same offence? 2d. When it is severer, than the punishments established for greater offences.

If the laws, in order to be just, must consider the extent of the injury done to society by the actions, which they make criminal, and then establish a penalty, which should bear a proportion to the other penalties established by the laws, which govern a nation, we may easily perceive why the laws against duelling are always unarmed at the practical purpose, for which they were enacted. Among several nations the killing a man in a duel is considered to be murder of the first or second degree; although no man will show the same abhorrence for the duellist, which he shows for the murderer: yet the laws punish these two crimes with the same punishment, while this difference is extant;

that every man is liable to be murdered, and few men, or none, are liable unwillingly to expose themselves to slay, or to be slain in a duel!

Laws against duelling, being made by the few, most generally prejudiced men, carry with them the inconsistency, which is wont to characterize the actions of prejudiced men, and of the few, who pretend to set up themselves for a model of the actions of all men. Public opinion is the sum of the whole number of individual judgments expressed upon one same subject; and, as men may have good sense in spite of the laws, which aim at depriving them of their natural reason, it will always happen, that the law will constantly be unarmed, which punishes with death the wretched husband, who sought in the chance of a duel that revenge, which the laws of his country are unable to offer him.

Public opinion will always be in favor of duels, and the laws against duelling will always be unarmed, as long as the seducer of a wife, and he, who feloniously assaults another, and he, who betrays an innocent daughter, are to be condemned, by the way of atonements, according to the Romish tariff; and they are to suffer death, who, in attempting to protect their reputation, were so unfortunate as to slay him, who deprived them of all social happiness!

Thus epiloguizing I say: that, in order to have laws capable of preventing or punishing duelling, it is necessary to make duelling a special crime, by means of a positive law; and then create the means, by which to have the law executed.

That, if we really wish to have such a practice extirpated from its very root, it is necessary to provide so, that national habits may be caused to derive from national discipline; and then cause discipline to become almost invariable, by means of wise laws.

Moreover if we wish not to reform our habits, then, in order to have that practice suppressed, it is necessary that parents, in choosing the master for their children, take notice both, of the abilities, and the moral habits, of him, whom they are to entrust with the education of their sons.

It is necessary that legislators, instead of abandoning the care of destroying the seeds of evil to the Ministers of the Gospel, who appear unwilling, or unable, to do it, should enact such laws, as would spare to citizens the trouble of assuming to themselves the right to pronounce upon the private actions of men: and this end will be attained by the mere act of having all the special laws enacted, which relate to the criminal actions, perpetrated in a state of civil society.

It is necessary to lend to the judge the necessary boldness in causing the severity of the law to meet the guilty; and this end will be obtained by causing the judges to be exhonerated from the immense latitude left to them in the application of the laws.

It is necessary that the guilty should always, and inevitably suffer the punishmeut established by the law; and punishment will always be inevitable, if laws are armed, and the causes, whence the uncertainty of the penalty derives, are caused to disappear from our legislations.

It is necessary to avoid both extremes, in determining the number of those, who, being concerned in fighting a duel, are to be held guilty.

It is necessary to punish duelists for the crime of having fought, on their own account, in spite of the laws; and not for having, by an action unaiming at crime, wounded or killed a man.

It is necessary to punish, if not the moral causes of duelling, at least the physical ones; and this by means of specified penalties established by positive laws.

Finally it is necessary, that the penalties established by the laws, which relate to duels and to their physical causes, bear a just proportion to the penalties established by all the other laws, which are made to compose the penal code of a nation.

THE NATURE OF PENALTIES.

The condition, in which human events have placed my country, takes from me the hope of ever sharing with others the honorable labor, which every citizen is proud to sustain, of attempting, by means of humane and rational laws, to contribute to the happiness of one's own country: wherefore I must decline, in this place at least, to speak of the intensity of the penalties, which are to be established by the laws, which relate to duelling and the physical causes of duels; though, in order to fulfil my task, I shall speak of the nature of the penalties, which, according to

my manner of viewing things, might be usefully established by those laws.

Opening the penal codes of nearly all the nations, that were, and those, that are, it is, no doubt, much to be wondered at finding, that among those nations, whose government is monarchical, the laws establish corporal penalties in a greater proportion, than the pecuniary, while among those people, whose governments are despotical, aristocratical, or republican, the greatest proportion of crimes, (thefts, homicides, and few others excepted) is to be expiated by gold alone, or by an addition of a trifling bodily punishment. (1)

Ancient republics however, appeared much to rely upon moral punishments; and they had two kinds of such panishments: the one negative, and the other positive. Infamy was the positive moral punishment. Deprivation, or refusal of honors and premiums, was the negative. The positive moral punishment appears entirely to have vanished from among modern people; the negative gives perhaps some, but very rare, symp-

(1) It is but an accidental coincidence, that pecuniary punishments are made use of in despotical and popular governments, in a greater proportion, than in monarchies: hence I wish it to be understood, that I purpose not to show any likeness between the two forms of government. The despot establishes a pecuniary penalty, not as a punishment for a crime, since he causes a bodily punishment also to be inflicted upon the guilty, but as a means to deprive the heir of the ability to revenge his father; republicans establish pecuniary penalties as the corresponding punishment of criminal actions, because with them fortunes being nearly equal, they feel, that he will be put to a great inconveniency, who is to pay a proportionally large amount of money, in order to indemnify society for the offence done to it.

toms of life, among those nations, whose particular form of government admits of a national representation. However it might be asserted, and this perhaps as a thing of fact, that the negative moral punishment also has lost all its efficacy among us, for the reason, that we have not national discipline established or maintained by our laws, whether governments are monarchical, aristocratical, or republican. Since, whenever honors and Magistracies are not received, and bestowed, through means of a national education, interest and ambition will always be the absolute moving causes to contrive, not to deserve, but to obtain them: hence this negative punishment loses all its efficacy; because they, who do not receive honors, cannot hold themselves slighted for not having deserved them; and they, who do not deserve them, cannot lose the hope of obtaining them, since they are no longer the reward of merit and virtue.

I have accounted, I believe, for the reason, why in monarchical governments pecuniary penalties should not exceed the bodily, in my essay on the practice of duelling, where I say; *their laws emanating from the will of one man, who feels it to be of the first consequence that his will should be done*, it follows, that *these laws are more strictly observed :* because the absolute purpose of all laws in a monarchical government being that of having the will of the Prince constantly done, there we find bodily punishments so far to exceed the pecuniary, as we meet but with a few instances, in which crimes may be atoned for merely by a fine. The reasonableness of such an excess will be plain to every

one, who will but observe, that among those nations, whose government is monarchical, there are very rich subjects, or vassals, who would with impunity sneer at the laws, if they were merely to be fined for their violation; since many of them would be conveniently able to ransom themselves from bodily punishments, one hundred times perhaps, and then be ready to violate anew the law, and to cause the Prince to fall from his throne. Because when once the Prince suffers his will to be disregarded, he has ceased to reign! (1)

(1) We should not strictly adhere to the abstract maxim, "*that love is a better support to a throne than fear;*" because those kings, who looked for no other means, to cause their authority to be respected, were always slain upon their thrones: since the wicked are better able to conspire against a sovereign, who relies upon the love of his subjects, and the people are as unable to shield a king under their love as incapable to shake off the fetters, riveted on them by a firm tyrant. The fear of making himself guilty leads one to be good: and men, who in any way are caused to be good, will ever love him, who by his firm government, and by positive and always armed laws, both protects and respects them and their property. Though we read of many tyrants, who, in consequence of their cruelty, lost either life, or the throne, or both, we are not justified for readily concurring in the opinion, that fear is a treacherous support to a throne: because it is suspicion, and not fear, which causes thrones to shake.

It is to be admitted that experience teaches us;

"Quanto e lubrica al trono infida base
Lo sparso sangue."

But it is also worth making the following distinction of fears: the fear of the law; and the fear of the prince. It is never the fear, which arises from the absolute observance of positive laws, which causes thrones to be shaken; yet it is the fear, which arises from

Despots most commonly make use of both the bodily and the pecuniary punishments; that is, they cause a bodily punishment to be inflicted upon the violators of the laws, and then have their property confiscated; because thus they enrich themselves, even by means of the crime committed by their rich subjects, and free themselves from suspicion, by taking from the heirs the means to act, the property of the guilty! With this sort of rulers every thing is depending on their uncontrolled will; and their will being forcibly unjust; wherefore necessarily hated; it follows that they must live in suspicion: and suspicion renders it necessary with them, to enrich, in order to buy new adherers; and to impoverish their enemies, in order not to fear them.

In a popular government pecuniary punishments most generally exceed the bodily; among those nations, whose government depends on the will of the

the cruel disposition, and suspicious nature of him, or them, who govern: because, when men know what they have to fear, contrive to avoid the evil, which awaits them; and provided the evil is of such nature as may be avoided, they will never make themselves liable to a greater inconveniencey, than that, which they have to submit to in order to avoid an evil, which affect them only through their behaviour. But when the evils to be apprehended are uncertain, and therefore not such as one may protect himself against; then he thinks it better to meet a positive evil, than live in apprehension of greater and unknown evils. The prince, who causes his subjects, by his suspicions and cruel nature, to live in suspicion, places them in the fatal alternative of meeting a positive evil, rather than abide perpetually

"Il primo, e il peggior" dei mali, il dubbio!

few, there are but few crimes, for which *gold* cannot make amends.

Nobles in the government of the few have shown all the wickedness of their minds, by the mere fact of establishing such pecuniary penalties: they appear to have aimed at two things: the one, to ruin one another by means of the excessive intensity of such penalties; the other, to keep the multitude, who always are poor in an aristocratical government, continually depending on them.

The few, who govern, among those people, whose government, either is aristocratical, or has a tendency to concentrate itself in a few hands, do practically succeed, by means of such laws, in ruining one another; because, the penalty, being such as would impoverish the violator of the law, will always cause him, who is condemned, whether impoverished, or imprisoned as a debtor to the State, to cease to belong to the number of the rulers; and therefore the government would be concentrated in fewer hands. Besides they, who rule every thing in an aristocratical government, being always looked upon by the great bulk of the people as tyrants, will ever have it in their power, almost with impunity, to calumniate the one of them, who should dare to oppose their tyrannical schemes; because pecuniary penalties being not such, from their very nature, as to awake feelings of sympathy towards him, who is caused to suffer them, the people will always show their hatred, whenever they are able, to any of them; and the few, profiting even of this foolish hatred of the people, will see him,

who dared to oppose them, poor and unpitied, to offer to the blind and rejoicing multitude the living example of their might and tyranny.

They obtain also, by means of these laws, to keep the multitude dependant on them; and this for two reasons: 1st. Because they, attributing to themselves the faculty to ransom themselves from bodily punishments, as established by those laws, which regard the crimes, most commonly committed by the lower orders of society, preserve to themselves the right of offending, with impunity, the multitude: 2d. Because they are sure by means of pecuniary penalties of depriving of liberty any of the people, who should either violate the laws, whence the few derive their power, or be caused to violate them, or merely be accused of having violated them. Besides the nobles, from the very nature of such governments, have always it in their power, to extort from the people those sums, which will enable them both, to ransom themselves from bodily punishments, and to offend anew the multitude. Nobles, if we look to the only aristocratical government now existing in Europe, cannot always be sued, and when they may, the poor is scarce able to offer the bail necessary for sueing a rich man. The poor have no shield against such laws: honesty itself may cause them to be deprived of liberty; and at all events, they will often be caused to lose their liberty, by the mere fact of being sued. The multitude always surrounded by the snares of the laws, have no other safety, than to seek protection under the invaders of their rights: hence prisons are peopled by the daring,

but poor, citizens, who attempt to raise a ditch against an overwhelming tyranny. The multitude must either be the slave of the nobles, or see their families ruined! Add to it the debtor laws, and the poor shall always be guilty! (1)

(1) England might be cited as a practical illustration of the many evils those people are to suffer, whose governments have a tendency to aristocracy. The rights of the common people of England appeared to be well protected by the Magna Charta, which the nobles and the clergy obtained from King John: yet the people, unconscious of their rights, abandoned the care of protecting them in the exercise of their individual rights to the same barons, who had forced the king to the recognizance of them. Wherefore the nobles and the rich, who were charged with making the laws for the whole of the people, aimed at protecting, by means of laws, their growing riches and estates: and this they obtained: by enacting laws, which protected more their commerce, than manufactories, though able to exclude the poor from enterprize, since capitals were necessary to establish a manufactory; by causing the common people to work at home, and to sail afar in the employment of capitalists, who, vesting foreign wealth in their manufactories, succeeded in attributing to themselves the government of the nation, by making the state their tributary; finally by putting money out of the reach of the common people, by means of consols, and by causing machineries to supply to men. The ill-omened discovery of America, where innumerable populations gave way before the modern Choramites, who worshipped again the golden lamb, caused the fatal metal to flow into England, through the proud but inert hands of the Spaniards. Hence the English rich have belied the saying; *that man is dependent on man;* hence they have succeeded in rendering the great bulk of the people dependent on them; hence they have shown, that they may be deemed eminent in knowledge, and excellent in Christianity, though *continually doing to others, what they would not wish done unto them!*—There machines are made to supply workman-

Among those people, whose government was popular, pecuniary penalties proceeded from a purer source; particularly so with regard to ancient republics. Private fortunes, being nearly equal in popular governments (at their origin, I mean,) cause pecuniary penalties to be equally felt by all the citizens. There the public treasury, which is not, and should not be rich, is supplied by the violator of the law, who by the mere fact of supplying the treasury of the nation to which he belongs, indemnifies society for the injury it has received by his criminal action, and places himself under the necessity of living in penury, thus making an adequate expiation for his crime. By means of such penalties the State is not deprived of the labor of one, who may again be a good citizen, when once he has expiated his crime, by suffering the penalty corresponding to the injury, which society thinks to have received by his criminal action: and the public treasury is not impoverished by the building prisons and keeping there men, who become useless to themselves, and burthensome to the same society, they have offended.

But as soon as the polish, which men naturally at-

ship; railroads and loco-motive engines, to the usual means of conveyance, which required the aid of man; and machines and steam consume the bread of the poor, yet produce nothing, that is able to quell hunger. The people herd, like the cattle of Polyphemus, truantly wait for the unbarring of the beneficent gates of their parish charity; and every day thank them, who have taken every thing from them; and every day hope to obtain the morsel of bread, to eat which they live.

tain by the increase of society, caused this equality of fortunes to disappear from among a republic, these same laws, which required a pecuniary atonement for any violation of them, were the cause of the ruin, and the fall of the republic: because the poor and industrious citizen was always to be ruined by such penalties; while the rich, and lazy, would scarcely have a perception of it. Hence the rich were able to offend, with impunity, the poor, who, incited by the offence, sought the revenge, which made it necessary to build prisons. Fatal abodes built for the poor alone! Abodes to build which the rich contribute what they deny to the hungry multitude, who, placed between the sword of the law, and the misery to which they were born, learn to hate the rich, who have it in their power to ransom themselves from punishments.

With regard to modern republics, it would appear, that the majority of the legislators of a free people, on consideration that the public treasury is always to be supplied by the private fortunes of citizens, have had this in view: to derive from the very offences done to society, as much advantage as they were consistently able. Wherefore, establishing the principle, that crimes should be expiated, in a great measure, by ransoms, they entertained the hope, that the public treasury would eventually be supplied by the violators of the laws; and thus be, in part at least, exonerated from the taxes, which they, as men who possess property, were liable to feel more, than others.

But whatever be the origin of pecuniary punish-

ments, and however useful such penalties might have proved in the infant state of civil society, there is no doubt, that in the present condition of society, they are unjust: because a fine, being either to be paid materially, or to be made up by one's labor in the State prison, will cause the different violators of the law to receive a different punishment for the same offence; since one will be caused, by his original sin of being poor, to lose his liberty; while the other, by his innate virtue of being rich, will not be caused to pay his crimes dearer than his most silly amusements. This injustice is universally felt, (as I shall show, speaking of the punishment of death) though not universally expressed, and it is the cause of that unchristian hatred, which the common people show to the rich. This injustice is the cause of the abhorrence, which the mass of the people feel for their laws and their magistrates, and of all the crimes, which are committed through despair; when one abides no longer the hope of obtaining what he deems necessary to sustain life to him, nor of seeing the offence done to him, avenged by the law. (1)

(1) It is with regard to this circumstance, that pecuniary punishments are differently felt by the different violators of the laws in our present condition of society, where the accumulation of wealth cannot be obviated, that I have said, in the essay on the practice of duelling: *he, who takes honor from a man, or any thing more valuable to him than gold, must suffer punishment in his person, and not be permitted to set a price upon another's infamy.* Because indeed to what does it amount to condemn one in 10,000 guineas, who possesses 500,000, if he be not placed by such penalty,

The positive moral penalty, or infamy, still exercises some influence among those people, where premiums are decreed to virtue and merit: the illustrious Beccaria says: "Infamy is a sign of public disapprobation, by which the guilty is deprived of the suffrages of his fellow citizens, of the confidence of his country, and of that kind of fraternal love, which society is wont to inspire." But the same writer adds, "it is not within the reach of the law to inflict it!"

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* * * * Thus it is necessary, that the infamy, inflicted by the law, be the same, as that resulting from the relation, that things bear to men, and in conformity with the universal moral, and with the

in circumstances, which will either prevent him from repeating the same offence, or deprive him of the ability to do again injury to the person, he has offended?—The poor alone, who cannot pay his ransom, will meet the deserved and adequate punishment. For this reason the multitude, and many an honest man, look with contempt npon him, who receives a price for the infidelity of his wife. Alfieri, relating the transaction of a duel fought between him and the husband of his English Nimphe, says, "I must feel very much indebted to this young husband for his generous behaviour; because he would not kill me, though, in all probability, he might have done so; and would not have me condemed in money, as the law sanctions in the country, *where every offence has its tariff*, and that, against matrimonial ties, has it very high." The behaviour of the English nobleman will, most generally, be held generous; and if so it is, how will the law be respected, the violation of which is a cause of praise?—And if the law is not respected, shall it be able to deter men from crimes?

partial morals, as resulting from the several systems, which will always be the absolute legislators of the common opinions of a nation."

The Florentine Secretary says: "the universality of men live content, when neither property nor honor is taken from them."

Now if we combine together the opinions of these two great philosophers, it will result, that whatever be the partial systems, and the universal moral, which are prevailing in a nation, men will never give, by their speeches, bad fame to one, who has not taken, either honor, or property from them! It is with relation to this, I believe, that Beccaria subjoins; "The penalties of infamy should be, neither too common, nor fall on a great number of persons at the same time: not the first extreme, because the real and too common effects of the opinion weaken public opinion itself! not the second, because the infamy of the many is resolved into the non-infamy of the whole number."

According to the definition of infamy, as given by Beccaria, the penalty of infamy could not be inflicted among those nations, where the people cannot confer charges, dignities and magistracies: and this is the reason, why I should rather incline to the opinion of Macchiavelli; that men, though unconcerned with almost every thing, that surrounds them, yet are unwilling to submit to offences done to them in either honor, or property; and therefore he, who thus offends them, will be held infamous. Wherefore it

will be but in vain, that the law attempts to affix infamy to actions, which do not offend the generality of men in their honor, or property.

It appears to me, however, that infamy cannot be made use of as a means to punish crimes among those nations, where national habits are not derived from national discipline; because, if infamy (according to *Cornelius Fronto de diff: vocabulorum*) *ex multorum sermone nascitur*, the many will never make the offences, which do not, and cannot, affect them, the subject of their conversations.

He, who betrays his country, will be marked with infamy, because his treachery does, or threatens to do, injury to all citizens: but a people of servants will never hold him to be infamous, who betrays their common tyrant; unless they are taught to believe, and do in fact believe, monarchs to be supernatural beings, and servitude, a present of the Divinity.

He, who refuses to bear arms in defence of his country, is held to be infamous. The lazy were holden infamous by ancient people, as it may be inferred from the following proverb: *infamus dictus est ab antiquis digitus medius, propter ignaviam: quoniam indigere videatur aliorum defensione*. Persius, who, in order to mark one with infamy, says, in his second satyre, *infami digito lustralibus ante salivis expiat*, appears to confirm the proverb. And it appears to me, that the law ought to be highly prized, which could be successful in causing the lazy to be marked with infamy; and it could easily attain the aim, if all citizens were apprized, that the lazy do them injury in their property,

since they must eat a part of what is earned by industrious people. And the nation, who could have such a law, both enacted and feared, would need but few criminal laws, in order to punish crimes.

However this clearly results from what has just been taken into consideration, that infamy cannot proceed from the law, unless natioual education also is determined by the law; since the law, if habits are not national, cannot force men to make such speeches, whence infamy is to be derived for him, whom the law declares infamous. Nay, the law is not even capable of protecting citizens against infamy; since one may become infamous (where laws preserve not good morals) from the nature of the offence done to him, as we read in Cicero—6 ver. *Quo in oppido multas familias totas in perpetuum infames tuis stupris flagitiisque fecisti.* Daily experience shows the practical truth of Cicero's opinion of infamy!

There is another kind of infamy, commonly called ignominy. One may derive ignominy from the very nature of the action, he has perpetrated, or have it inflicted upon him by a judgment pronounced by others, either on his habits, actions, or works: viz. Cicero de pro. con. *Albatius una plaga concidit ignominia senatus.* Cornelius Fronto thus defines ignominy;..... *ignominia vero imponitur ab eo, qui animadversione notare potest.*

The Jurist of Louisiana has introduced this penalty in the code proposed for that State: where we see the guilty sometimes, deprived of all the rights of a citizen, sometimes, of those of the first and second class.

Notwithstanding I am inclined to believe, that such a penalty cannot be efficaciously, or even with justice, inflicted upon duellists; since those actions alone, which are prejudicial to the public welfare, or to every individual, who composes a nation, may be held ignominious.

To seduce a wife, to betray a maiden, to defraud his creditors, to cause the army entrusted to him to be defeated, or to neglect improving the opportunity to do advantageous feats, are actions, which the law may usefully mark with infamy: because they either are prejudicial to the generality of the people, or may severally offend every citizen, either in their honor or property; wherefore every one will disapprove them, and consider him, who has made himself guilty of any of such actions, unworthy of honors and magistracies. But duels, such as are fought in our present state of society, do offence, neither to the honor, nor the property of the multitude.

If those, who have, in any way, to govern a republic, were to be chosen, according to the practice of the Athenians, that is, excluding those, who are neither husbands, nor fathers, the law might efficaciously establish the punishment of ignominy for seductions. (1) Libels also could, in part at least,

(1) "Admirable is that law," says Montesquieu, "which excludes from the magistracy, and even from admittance into the great council, the children of those, who have lived or died insolvent, except they have discharged their father's debts—It has this effect: it gives a confidence in the merchants, in the magistrates, and in the city itself. There the credit of the individual has still all the weight

be prevented by affixing infamy to that offence, if magistrates were chosen from among them, who have to love their good name, not only for themselves, but for the sake of their children. However assaults and battery, and duels, require, I think, bodily punishments: more so, since, according to our present public opi-

of public credit." I have cited here Montesquieu, in order to show, that the ancients valued practical honesty much more than we do: particularly so, because, in the library of one of the first universities in the country, I found the opinion of the almost divine spirit of legislation, "an excellent law, etc," countersigned "an unjust one."—Why is that an unjust law? Because it punishes the guiltless, answer those, who see in the magistracies nothing else, but the salary, which they are to receive, who are chosen magistrates! I had wished to hear a lecture upon that law, before the book was suffered to stand thus marked: before people were made aware, that magistracies were instituted for the universal benefit of the republic, and not for the personal advantage of those, who were to hold them! What would the ghosts of our ancestors think of modern honesty, were they to handle that book? Is it that people have nothing to apprehend from their bestowing magistracies upon persons, who are made accustomed coldly to witness the desolate tears of the orphans and the childless, whose nearer relations died of sorrow, after having been deprived of their last penny by the father of their magistrate? If that law was to be holden absolutely unjust, how many times would children be indebted to the want of honesty of their parents for the station they hold in life? Would not parents be more cautious in their enterprizes, if they had to apprehend the prejudice of their sons by their misconduct?—The Almighty punished in the forthcoming generations the sin of man. "If He were to be holden unjust, we shall not hold Him unwise; because parents thus learnt to love virtue as much as their children." And virtue and morality will never bless a people, unless they are caused to admire them both in their magistrates!

nion, imprisonment casts a stain upon him, who has been caused to suffer punishment.

EPITOME.

Reducing all that has been said to a practical conclusion, we have; that:

To extirpate from the soil of polish the ivy, which takes life from the proud spreading tree of civilization, or in other words, in order to attempt successfully to suppress the practice of duelling, two things are necessary, namely, national education and positive laws.

National education will be caused to be introduced among any people, if both the rules, which are to govern the preceptors of youth, and the mode of acting, to which the teachers and the pupils are to conform their actions and behaviour, are caused to be derived from the legislative assembly of the nation, and protected by the laws. A nation may, under any government, require preceptors to conform themselves to certain rules, and to possess the qualities, which the mode, established by the law, requires, and the alumni, to conform themselves to a certain behaviour. The corresponding punishment, even before national discipline is agreed to, will be, for the preceptors, prevention from giving instruction: for the alumni, suspension, and exclusion from schools, or Gymnasiums. Ignominy, or incapacity to certain charges of the republic, should be affixed to every such offence; in a

greater degree for the preceptors. If the preceptors are required to possess necessary qualities to instruct; parents will, on their own account, cause their children to conform themselves to the behaviour required from them. The laws, which are to govern henceforth, must be made anew. It is too ridiculous to boast of our civilization, and to overrate the march of the intellect, if we are still to be governed by laws, which, while showing the ignorance and barbarity of the times, in which they were enacted, proclaim both, the ferocity of mind of those, who enacted them, and the selfishness of those, who sanction them. But laws should consider the man of civilization, and not the mere self-moving compound of bones and flesh. Our laws should be plain to those, who have to obey them, and not to be argued by those, who are charged with their execution; because the less one can argue, the more he is liable to meet the severity of the law. Our laws, armed with the individual rights of defence, (the exercise of which every man is deemed to have ceded to society, by the mere act of joining it), must protect both the body and the mind of all citizens: wherefore they must defend them against the snares laid to their mind, by choosing the persons, who have to instruct those, who are to become citizens; determining besides the mode, whereby one is to become a citizen; that is, establishing national education.

To prevent duelling it is necessary, that parents supply the want of national education, by their choice, when they are about to entrust their children to the care of another. They should remember the

choice Philip of Macedonia made; if they do not, they are accountable for the crimes and vices of their offspring. Ministers of the gospel have it in their power to cause uniformity of morals to govern the whole of a nation, if they merely follow the doctrine of Christ, and preach it as he did, The doctrine is, to show our love for the Almighty through the love for our fellow creatures: the mode of preaching is example. The religion of the Jews was of command; that of the christians is of practice: the more valuable is the latter, because it is never controversed, if always practised. The laws must punish the physical causes of duelling, making each of them a specified crime, and depriving the guilty of all hope of escaping punishment.

To punish duelling, the law should hold guilty the two principal parties alone: consider three different degrees of criminalty in the violators of the laws, which relate to duels: and entirely disregard challenges. A specified and absolute penalty must be established for each of the three stages of the crime of duelling (*a*); the means also, by which to cause the guilty to suffer punishment, must be created by the law; and the guilty must be deprived of the hope of escaping punishment.

Penalties cannot be pecuniary in our present state of society; because the rich man might buy the honor of the poor, if he is to be fined for his crimes.

Bodily punishments must be established for each offence: the punishments, established by the laws

(*a*) See page 97.

against the physical causes of duelling, and the three stages of the crime of duelling, must, in their intensity, be in proportion to the intensity of the punishments, established by the whole of the criminal laws, which compose the penal code of a nation, viz:—Twenty years of hard labor in the State prisons for the third stage of the crime of duelling; eight years idem, in the second; two years confinement, in the first.

Assault and battery ought to be punished with the same penalty, that corresponds to the second degree of the crime of duelling.

Slander with the penalty corresponding to the first degree.

Seduction of wives and maidens, with six years imprisonment; of young persons under fourteen years of age, with twelve years of hard labor in the State prisons. If the seducer were a married man, in this last case, he ought to suffer no less penalty than imprisonment for life, and hard labor.

Ignominy may be successfully inflicted upon seducers of wives and maidens, that is, the law, might declare them incapable of filling certain places. It may be inflicted upon libellists, for a period of time not exceeding four years; it would be unjust with them, who have committed assault and battery; it is unnecessary with the seducers of young persons. It would be cruelty to inflict it upon duellists; because this would reduce them to despair; since they would be placed between the iufamy for not fighting, and the ignominy for fighting, a duel.

AMERICANS, ye, the happy people, whom Providence chose to cause again the bright smile of liberty to bless the labor of man, ye alone, may set forth the bright example of true civilization, by kindling the holy pile, which shall consume our heaps of laws.

All the might of the proud lion fell short in the attempt to subdue the undaunted hearts of your fathers. Shall now the dark clouds of vice hinder you from accomplishing the great work of your ancestors, wholly to free man, by daunting the despotical rulers of infant society, passions and crimes? The predomination of passions engendered vices in times of barbarity; and vices are embodied into crimes, in those of imperfect civilization. Man has received from nature the free choice, and the means too, to have it accomplished. It matters very little to know, whether one man, or many crimes, hinder him from making use of these means; what it matters to know, is, that the people alone are free, whose compatible accomplishment of their choice, and the practical exercise of their rights, are protected.

They are demagogues, who proclaim those people to be free, who have not an acknowledged ruler over them, if, among them, vices engender selfishness in one class of men, and idleness in the other! Continual watchings and apprehensions constitute the punishment of the former; poverty and crimes, of the latter class. Men who drag out the life of helpless want, and then die, either in misery, or upon a scaffold, are not free! Nor are they free, who have to watch incessantly, in order to protect both, their life and

property. It is when the empire of the law is absolute, and all men conspire to have every one of them enjoying life, that they are free! And all men will enjoy life, if the whole of what is wasted by crimes is earned by labor.

If we are to be told that this is the age of the march of the intellect, let us have the condition of those beings, with whom intellect is coupled, ameliorated. Let suffering humanity be rescued from vice; and then true civilization shall bless the whole of the earth! Then true religion will dwell within our hearts; and our hearts will swell, with the sympathy of man. If Heaven is to be the abode of the righteous, how blessed will they be, who succeeded in protecting man against *the liableness to crime!*

AMERICANS, the Almighty created no foreigner amidst the human creation; the Messiah visited the earth to approach the ties, which unite the whole human family; and civilization has caused the barriers to disappear, which obstructed the free intercourse of men: wherefore the present work, if it is to be *useful to the world and honorable to the author*, (*a*) will not be a foreign production, while written with the best christian feelings, for a holy purpose, among men.

The Almighty Ruler of nature, the Creator and Father of men, distributes in his wisdom, and in different proportions, those talents, which man, from their very derivation, is bound to contribute to the benefit of the whole human family. The Providence,

(*a*) Senator Livingston.

passions engender, may hide the true light from man, and guide the best intentioned one, step by step, down to the very bottom of the valley of vice, there to meet the brandished sword of justice, which alone gleams in the perpetual darkness of that human hell. The lamentable occurrence near Philadelphia was like the flash, which accompanied by the thunder, both awakes the Pilgrim from the slumbering of despondency, and shows him the way to the hospitable walls; it directed the course of the innumerable thoughts, which engrossed my mind!

I shall rejoice, if my sufferings, and the want of sympathy, which men show to virtue, have, in any way, contributed to ameliorate the condition of my fellow creatures; and, though I hope not to put *the age in which I live under obligation to me*, (*a*) nor of seeing *my name enrolled among the benefactors of the human family*, (*b*) yet, unmindful of fortune, and our selfish manners, I willingly prosecute the begun task.

(*a*) The Hon. James M. Wayne, of Georgia.

(*b*) From the National Intelligencer.

CONTINUATION.

CRIMES AND PUNISHMENTS.

After the experience of past ages, and that of the present one; after, having witnessed the inefficacy of all laws to prevent duelling, the majority of the people appear now to be inclined to abandon every hope of ever succeeding in having that crime prevented. The many, on considering how unavailingly has the law required victims, in order to deter, by means of the example, men from a crime, which the by-gone ages, public opinion, and social intercourse, appear to legalize, almost think it to be cruelty, to punish duelists. Moreover a great many, who are wont to confound the first effects with the new causes, apprehend to draw, by the mere fact of succeeding in preventing duels, greater evils upon soeiety.

Yet, for what reason should we fancy, that fatal consequences are to follow the prevention of duelling, if we apprehend none, from the prevention of other crimes; though society, for as many centuries, and under the same circumstances, has been totally unsuccessful in having one single crime prevented! It is,

indeed, a thing much to be lamented, that our penal codes offer not, to the eyes of the man, who its not guided by selfish passions, one law, whose aim is to prevent crimes: nay, there is not, in all our penal codes, one law, that is calculated adequately to punish crimes, unless we make a *Butcher* of the fabulous Goddess, armed with a sword by real tyrants.

I can perceive but two causes of the inefficacy of the laws to prevent crimes: 1st. The tolerating the causes of misdemeanors, which must forcibly lead men to crimes; 2d. The senseless distribution of punishments as offered by our criminal laws.

It will, no doubt, cause the many to wonder, why the humane and wise laws, as proposed by the Hon. Edward Livingston, have not yet inspired men, who call themselves christians, with the love of mild laws? Though all wonder should be caused to cease, if we but consider, that one man, (a philanthropist it is true; a true philanthropist, an ardent one!) who has no other power, except that, which the applause of the few good may afford, cannot by his undaunted courage in telling the truth, in behalf of all men, and by his unseconded efforts, check the torrent of selfish passions, which are caused to invade the hearts of the children of civilization, by the abuse of civilization itself.

The philanthropist of Louisiana disregards the laurels of crimson brightness. He lays a seed of the tardy laurel in a grotto, whose atmosphere is poisoned by the creation of Cadmus: perhaps a beam of sun will never pierce through the thick mist of vices, and if

it does? The laurel will grow slowly; its green will be pale; its weak branches, unable to bring forth leaves: and, when the incessant war of the ploughed children of the earth shall cause the grotto to be shaken, and razed to the ground, then the laurel will majestically display its enriched branches, but alas! Only to show to a grateful posterity the tomb of him, who planted the seed. Yet the indefatigable Fellow of the whole *human creation* makes his happiness to consist in attempting to make life tolerable, if not dear, to all men. His philanthropy is not made to consist in weighing the bread of perennial starvation for the destitute, but in causing them to love to bear life, who cannot find attractions in it; in showing that criminals also, under their imperscriptible quality of men, are entitled to sympathy and mercy; in attempting to enable them to love their wretchedness, who derive it from their crimes, pointing to them the means, by which both to atone for their misdeeds, and to obtain in the world to come the mercy, which was not denied to them in this. Let every European nation have a national Livingston, and then we shall boast of our civilization, for every man will be taught to love all men as fellow creatures.

Italy, the Phenician bird of history, arose out of the death of barbarity to the new life of civilization: the first, in every thing that the contrivances of man can effect, produced one Galileo, to lead men to the knowledge of the physical world in which they live; one Beccaria, to bring them to the enjoyment of the intellectual world, which they constitute, by means of a

just civil society. If England boasts of her Newton, America shall not boast the less of her Livingston, if she succeeds, by looking into human nature, and following the precepts of a divine religion, in enabling all men to enjoy the life, which has been granted to all human beings. It suited the speculative mind of that nation, to produce a great genius, who would measure and describe almost the throne of the Almighty; it suits the humane and christian feelings of a free nation to free the poor from want and idleness, and the rich from selfishness. America, like the morning star, which sees more of the light, will cause the world to look to her for true light, while the slavish, or corrupted nations of the rest of the earth, cherish the laurels growing out of human blood in the lands of desolation.

I have shown in my essay on duelling, why cruel laws have proved inefficacious in preventing duels; I should now show, why the mild ones are also inefficacious to prevent that, or any other crime. But on the one hand, it would appear premature to speak of the mild laws, which are more hoped for, than desired: on the other hand, I think it unnecessary, at least in this place; because the mild laws can be inefficacious only by a different proportion of the same defects, which are inherent in the cruel laws.

However, Senator Livingston's laws against duelling might be exceptionable in two respects; the nature of the punishment, and the incidental mode of convicting the guilty. Punishments chiefly consist in the suspension of the passive rights of citizens for

the whole number of them, who give, or accept, a challenge, fight, or are concerned in fighting, a duel.

Duels, the greatest number of them at least, are fought by men belonging to high orders of society: and challenges are most commonly accepted by the most innocent of the parties; or by persons, who are possessed with a most delicate sense of honor. Wherefore the best educated portion of the people, and the warmest worshippers of honor, (however great be the prejudices of public opinion upon honor,) and the talented man, would be punished more severely, than they, who are not as deserving! Nay, some duellists would receive no kind of punishment; because, whether they give or not a challenge, accept it or not, they will never be chosen to hold any office.

Thus the undeserving would always aim at greater revenge both by insulting and challenging the deserving; because, if a deserving man accepts a challenge, he is declared undeserving by the law; if he does not, by public opinion: and thus the deserving man would be made liable to insult, because of the severity of the punishment, which, from its very nature, can be inflicted on the deserving man alone. And this would place a commonwealth in the unpleasant alternative of choosing its magistrates either from among the less deserving, or from among her abused citizens. Besides, if high minded men are compelled to bear insults, without being effectually protected by the law against insults, they will either preserve rancour, or cause those, who insult them, to expiate secretly their abuses. This reminds me of the history of an old

Italian Countess, who died in poverty, because her agent had piously learnt how to make up for her abuses. Worthy men, who have patiently to bear insults only on account of laws, which punish severely him, who is unwilling to bear insults, and then leave full faculty to the undeserving to abuse whomsoever, will first find it hard to submit; but if they do submit, they will soon laugh at the inconsistency of society. Thence they will proceed to despise those, who compose the moral body, which we call society; hence they will make men, the means to satisfy their ambition; in order to make up for the insults, they have to bear, by their inconsistency.

The incidental mode of convicting those, who are guilty of having fought a duel, is the declaration, which every one, who is to hold an office from the State, is to sign under oath. By such a declaration any one, who has been concerned in fighting a duel, will be placed in the alternative, either to perjure solemnly the truth, by means of an oath, or to accuse himself, and pronounce the sentence, by which he is to be dispossessed of the office, to which he had been, deservedly perhaps, elected. It appears to me that we might as well have the legal axiom, *that nobody is to be required to condemn himself*, if we have the other, "that no one is bound to accuse himself.

I would wish to make some remarks on the articles fifteen, sixteen and seventeen, of those laws, if my mind was not more usefully engaged in admiring the unremitting efforts of the philosopher, who contrives, by all means, to have the burden lighted, which is

caused to weigh upon the most numerous, and the poorest portion of the human family. (1) When his

(1) There is no doubt, that the debtor laws render heavier the burden, which weighs upon the larger portion of the community; and I much regret I was not able to speak of them, as connected with the criminal laws; particularly so because I have been desired to do so. However I widely differ from the opinion of my learned friends, who think those laws make part of the criminal legislation; because I cannot perceive, that the debtor laws bear any relation to criminal laws, unless we should consider it to be criminal, the having enacted them! The debtor laws owe their origin to feuds; feuds have been abolished, as an hinderance to attain riches; but the laws have been preserved, (as our civilization required) because they oppress only poor people. Besides, my attention having not been called to this subject, in that age, in which sensations are both, powerful and lasting, I am aware of my incapacity to speak of them; and if I were able, I could but say that, which those, who advocate them, know better, than I am able to say. Moreover, I have undertaken to speak of those flaws which are common to the whole family of civilized men; therefore, I could not consistently treat of an evil, which afflict but a few nations. Every body knows, that it would be unworth fighting for liberty, if afterwards a poor man is to be made liable to lose a liberty, conquered perhaps, by his blood, or that of his fathers, merely on account of his inability to pay nine pence. A successful murderer may escape punishment, by a timely flight; an honest, but poor man, is secured in a jail, because he possesses not, and gets not the means to go abroad! Nobody doubts, that such laws recommend perjury, as the only means, to preserve both property, and individual liberty; that they favor fraud, as the only means to sneer at them; that they lend a covering to dishonesty, as the only means to avert imprisonment. He, who chooses not to defraud his creditors, and yet is not able to pay all his debts, must fix his doom! Some believe, that those laws lend the means to private vengeance; since it pla-

countrymen will echo to the praises, which distinguished foreigners have bestowed upon the philosopher of civilization, then the condition of the guiltless poor will be ameliorated; and that of the guilty transgressors of the laws, made tolerable. Then society will show itself to be concerned in the fatal duty of fixing the doom of those, who have broken the the laws: then the Emulator of Beccaria will succeed in having life spared to many criminals: then his most happy country will set to the world an example of true civilization, by building prisons, which be calculated to correct, or at least to punish, the guilty, and not to lead the uncautious and the inexpert criminals through the difficut paths of roguery. It is a lamentable fact, that one only needs to send for a few years a youth, perhaps unconsciously guilty, to a modern prison, in order to have him a graduate in roguery. Is it not distressing to hear the breakers of the law tell society; "your laws are but of two kinds; the one makes criminals; the other punishes them."

Porter, the mail robber, who was executed in Phila-

ces at the disposition of the rich, any one, who chooses, or is forced, to be obliged by them. Cæsar could easily win the hearts of the Roman people, because their choice was between him and jails. And it is apprehended, that all people will, soon or late, make the choice the Roman people made, if they are placed in the same circumstances. If ever a king of England should march into Scotland at the head of one hundred thousand troops, on his return, he might pay all consols with the bayonet, and be a king, without parliament!

delphia, has been made to say; "that if he had known, that so much benevolence and humanity existed in the hearts of men, as he discovered now, and since his being there, (in the State prison,) he would never have been guilty of the crimes, he has committed. He thought the world his enemy, and he consequently became an enemy to the world."

This speech would show, how much society ought to appreciate the philanthropical exertions of Mr. Livingston. What benefit is to be derived to the human family at large by lending a soothing pity and the desultory hope of christianity, to the wretch, whom society is to destroy?

It is not by causing the hope of future salvation to rise out of fear, within the heart of its victim, that we benefit society; but by sparing it the vaunted necessity of destroying lives, which the law is only entitled to protect.

It is not by punishing the guilty, but by taking the occasions of crime from the uneducated and the unaware, that society is caused to grow perfect.

It is not by making prisons to appear splendid buildings, but by reducing their number, and causing the necessity of them, more and more, to disappear, that we may boast of the march of the intellect.

Finally it is not by causing the laws to command public and cold assassinations, that men will be deterred from assassinations; but by inflicting upon the transgressors of the laws such punishments, which, while allowing the necessary time for repentance and self-conviction, will enable the guilty both to indem-

nify society for the injury done to it, and to atone for his sins in behalf of his soul.

There are two great scourges in our present society, namely, prisons, and the punishment of death. Prisons are calculated to graduate in roguery all transgressors of the laws; the punishment of death, to spare to society the trouble of keeping them. Prisons punish men, because they make them rogues: the punishment of death destroys the guilty, because society declines to provide for the poor. Wherefore, I now undertake to speak of crimes in general, under the heads of *the Punishment of Death, and the Appendix*. I shall not recriminate the age in which I live, nor hold my ancestors, or my contemporaries responsible for the evils, which we have to endure. None of us are individually responsible for them, even, if no one should be deemed wholly innocent. *The best way to make amends for the past is to improve the future!* If we have not averted crimes, we have to endeavor to attain benefits for all classes of men; and the present and the future generations will be indebted to us, if society is to derive more benefits from our industry, than it has been caused to suffer evils from our neglect.—And this will be easily attained, if we follow Paley's maxim; that "the care of the poor should be the principal object of all laws; for this plain reason, that the rich are able to take care of themselves."

THE PUNISHMENT OF DEATH.

Thou shalt not avenge, nor bear any grudge against the children of thy people, but thou shalt love thy neighbour as thyself: I am the Lord. Leveticus, chap. 19th. v. 18th.

Although he, who should now undertake to write upon this subject, may add but little to that, which has been said by the illustrious Beccaria; yet, considering that afflicted humanity did not gather the fruits, which the philanthropic labor of Beccaria ought to have brought to maturity, either because he did not distribute the matter so usefully, that its comprehension was within the reach of all men, or because legislators have been unwilling, or unable, to derive from those writings the guide, which, long before, ought to have been followed in framing penal codes, I wish to write upon this subject, rather with a view to arrange anew the matter as given by Beccaria, than to add any thing of my own; or only to add as much as I have derived from those writings; and the little which the experience of after times, and my love for my kind might suggest to me, in order that, with universal advantage to society, a punishment unjust in its origin, inefficacious in its action, and pernicious in its effects, may be abolished.

Therefore I shall speak: 1st. of the injustice of the punishment of death: 2d. of its inefficacy in preventing crimes, or even in punishing them: 3d. of its pernicious effects.

CHAPTER FIRST.

Of the injustice of the punishment of death.

A punishment may be unjust in itself in two modes: 1st. when he, who inflicts such a punishment, has not the right of so doing: 2d. when it wants the necessary elements of all punishments established by the law: to indemnify society for the injury received; and to deter others from crimes, by the means of example.

Beccaria thus speaks: "what can be the right, which men assume to themselves, of slaying their fellow men? Certainly not that, from which both sovereignty and laws result. They are noting else than the sum of the least portions of the individual liberty of all men. Laws represent the general will, which is the aggregate of the individual ones. Who will ever have consented to give to another the choice of killing him? And if this choice had been given, how then can we reconcile this fact with the principle, that man has no right to destroy his own life? * * * * It appears to me an absurdity, that the law, which is the expression of the will of the people, which abhors, and punishes homicide, should command public assassinations, in order to deter men from assassination!"

Little, or nothing need be added to this, to show that the punishment of death is unjust in itself, because the right, that men assume to inflict it, is totally groundless. (1) However, as it has always been the case,

(1) I might here evade the question, whether the punishment of death originated from the expressed will of God, declaring that I am

that some, by attacking, almost in the abstract, one, or several maxims, met with in the writings of great

unfit to speak of the scriptures, (and this is too much the case) and therefore that I speak only of the civil societies, to which laws have not been given by the audible voice of their Maker: yet I wish rather to betray my ignorance of scriptures, than permit myself to shrink from discussing a question so much interesting to the christian family, in times, in which it is more remembered that God said: "And he that killeth any man shall surely be put to death," than mention made of the last prayer of Jesus upon the Cross. First I deny that our civil society derives even from the scriptures the right of establishing the punishment of death, and consequently of destroying men: 2ndly. I shall deny, that the Almighty Lord did ever establish such punishment: 3dly. I shall say, that even supposing the punishment of death to have been established for the Jews, it cannot be intended for the christians.

1st.—Our civil societies, which are now of christians, the whole of them are derived from people, who had not received their laws from the Almighty; wherefore, such laws as we follow, make, or sanction, are the agreement of men, who look out for themselves, when making laws. We follow the guidance of the Roman legislation, and find the laws, which were suggested by the Nimphe Ægeria, preferable to those of the Great Emperor, who made an atonement for his sins by shedding the blood of his son Crispus: we have made criminal certain actions, which had not been contemplated by the Almighty; one of them is smuggling; and we do consider, as indifferent, many actions which had been forbidden to the Isralites: and finally we make ourselves our laws, without ever consulting the Divinity, although always protecting our own interest. If the Almighty is not deemed to be concerned with the tariff laws, why should He be with the murders, which society commands? God chose a generation to make a people, but He never directly presided over, nor commanded the formation of civil societies; although he gave us the means by which to grow, and form societies!—Society is an

men, have thus attempted to invalidate their works. I wish now (it being highly interesting to humanity to

aggregate of men, and its rights and duties are derived from the individual rights and duties of them, who compose it; and if society, as a collective body, has the right of taking life from a man, individual men also must have it. Moreover, we derive not the right of punishing with death from scriptures, because we follow not the scriptures in enacting those laws, whose violation is to be punished with death! viz: *And the daughter of any priest, if she profane herself by playing the whore, she profaneth her father: she shall be burnt with fire.* Leviticus, chap. 21st. v. 9th.; we preserve not such punishment, although it is mentioned in the scriptures; nay, we accuse of impiety the members of the tribunal of the holy inquisition, who had preserved such punishment: we even sneer, in our days, at the idea of submitting to trial an enchanter; and yet the scriptures say: *A man also, or a woman that has a familiar spirit, or that is a wizard, shall surely be put to death: they shall stone them with stones: their blood shall be upon them.* Leviticus, chap. 20th. v. 27th. We do now consider as barbarous the laws of talion; yet the Almighty said; *breach for breach, eye for eye, tooth for tooth: as he has caused a blemish in a man, so shall it be done to him again.* Leviticus, chap. 24th. v. 20th. If the English had preserved such a law, their nobles would not have modern gladiators to fatten! The scriptures contain no law, which inflicts the punishment of death upon robbers, yet we have many such laws; our laws condemn in a fine the adulterer, although we find in the Leviticus, chap. 20th. v. 10th. *And the man that committeth adultery with another man's wife, even he that committeth adultery with his neighbour's wife, the adulterer and the adultress shall surely be put to death.*

2d.—We call punishment the inconveniency, or even suffering, to which he is subjected, who violated a law; and in order to subject the violators of the laws to punishment, we have magistrates, officers, tribunals, jails and executioners; the Almighty did not estab-

deprive of the opportunity to cavil those, who would prefer to see a few butcher the rest of mankind, than

lish any such thing, on the contrary, he always ordered the particular means, which cause the guilty to suffer punishment. Besides, if the Almighty had even established such a punishment, it follows not, that he established it among men, since he invested in no man the right of making laws, and killing men in his name. On the other hand, although I acknowledge, that the Almighty menaced to punish with death the transgressors of his laws, I do nevertheless deny, that the established such punishment: 1st. because by death it is to be understood the death of the soul, in the world to come; 2d. because the Almighty showed himself averse to punish men with any abrupt death in this world; *And in the sweat of thy face shalt thou eat bread*, He said to Adam, and that was the punishment for having violated the sole law, he was commanded to obey; *When thou tillest the ground, it shall not henceforth yield unto thee her strength*, this was the punishment for the first murder committed upon earth; and God, to show, that it belongs not to men to shed men's blood, in order to avenge an offence, added: *Therefore whosoever slayeth Cain, vengeance shall be taken on him seven fold.*

Finally, I insist upon the meaning of the word *death*, as I have it just interpreted, because we, being little versed in the allegorical language of a people, who was always ignorant, and knowing but little of the miraculous way, in which the text of the Bible was preserved by the fugitive Jews, dispersed by the Roman arms, a long time after the death of the Saviour, are compelled to read it translated in languages, which some time stick more at the letter, than the meaning of the scriptures; viz—*the latin text says. Sacerdotis filia si deprehensa fuerit in stupro, et violaverit nomen patris sui, flammis exuretur*, Lev. chap. 21st. v. 9th. If we compare with this the English text, as I have quoted above, we shall perceive how little they resemble one another. The English text says, *she profaneth her father* a very different meaning from, *et violaverit no-*

deny themselves half an hour of those *pastimes* confected with the tears of suffering humanity, and flavor-

men patris sui; then *she shall be burnt with fire*, and the latin *flammis exuretur*. Again, Leviticus, chap. 20th. v. 10th. *Si maculus qui fuerit cum uxore alterius, et adulterium perpetraverit cum conjuge proximi sui, morte moriantur, et mæchus et adultera.* I shall not proceed in comparing the two texts, because these matters are rather foreign to the subject I have undertaken to treat in these writings; although I wish to conclude by saying that neither of the texts declares, that the guilty shall be executed, whether we say, *they shall surely be put to death*, or *morte moriantur*.

3d.—Finally God, seeing that the people of His choice maintained itself a stiff-necked people, determined to make himself known to all the inhabitants of the earth, without any distinction. By an act of His will, He created Himself a son of the all-doing Divine will, and assumed such garments, as would put all men to contact with their God Himself, as He declares in the following verse—*the son of man shall send forth his angels, and they shall gather out of his kingdom all things that offend, and them who do iniquity*. St. Matthew, chap. 13th. v. 41.

Thus the Almighty instead of assuming an human voice alone, as He had done heretofore, in order to be heard and understood by men, preferred to assume the human appearance, and make himself known to the whole of mankind.

By this act He abandoned the direct Tutorship of men, choosing to lay before them the model, to which the actions of men should be likened, yet leaving them the free choice to follow his doctrines.

Jesus said that *the son of man shall send forth his angels*, because he wished the Jews to understand, that he was not different from the Almighty Himself, since the angels could not be his, unless the son of man was God Himself; further more he says, *out of his kingdom*, to denote, that He, who gave the example, is to judge men for their conduct. But after he has made himself known to be

ed with the blood spilt by the law, always intent to keep from the rich the sight of misery and wretched-

the Divinity itself, he pays the tribute to Cæsar, thus showing that henceforth men are to govern themselves with laws of their own making, and christians and priests are to submit themselves to civil laws. He said that to Cæsar should be given what is of Cæsar, and to Peter, what is of Peter. The second person in the Empire was always called Cæsar; and the Cæsars governed the provinces; the reason for which Jesus represented the civil government under the name of Cæsar, as he meant the church, by that of Peter.

Hence we have, that the Almighty by the very act of incarnation, thus coming among men, as the son of the almighty will of God, intended to give men a guidance for their conduct, yet abandoning to them the care of self-government; and thus separate the Church from the civil government. His religion he called catholic, because it should be common to all men, who wished to follow his doctrine: and thus he declared, that his *stiff-necked people* was nothing more, than other people, and that every body could be of his people, who followed his doctrine, whatever was the form of civil government under which he lived.

Moreover, if we were still to persist in this, that Scriptures are to be the rule of civil government amongst Christians, then the *Pope* should be the *Aaron* of the Christians, and *the will of God* ought to be made known through *his means*; because we can never admit, that the Almighty inspires tyrants, Kings, and parliaments, in order to give laws to the people. And, if the temporal authority of the *Pope* is either denied, or controverted, why should we pretend, that Scriptures are to exercise temporal authority with us, who are not Jews; and this, after Jesus, by his visiting the earth, had declared the ancient laws abolished, by the very act of relinquishing the Tutorship of a people, who continued stiff-necked, notwithstanding all the favors of the Almighty. If Jesus required men to do to their neighbors, what they would wish done unto them, he could certainly not mean, that they should hang Christians! No earthly tribu-

ness,) to endeavour to rectify the passage of Beccaria, "they (sovereignty and laws) are nothing else than the sum of the least portions of the individual liberty of all men."

Sovereignty by itself does not exist; nay there can be no sovereignty in a nation, but after laws have been made by the consent of the people. (2) Sovereignty does not reside in the people, as it is commonly asserted; it never can be vested in one man! It is with every man, and is represented by the law in a state of civil society. (3) Sovereignty is the effect of the law;

nal can represent that of the Divinity; because though Jesus is to judge all men, his tribunal did not exist, because it shall; and therefore it cannot be represented, because it exists not yet. So far was God from authorizing judiciary murders among men, that living under the flesh in the person of his son, He prayed for his crucifiers!

(2) Rees pretends, that the laws made by the people are but convenants, because he supposes laws to proceed from a superior power, which under worldly sanctions, consider the conduct of man; yet, Aristotle said, that law is "a declaration determined by the common consent of a city, shewing in what manner things are to be done."

(3) It is the general will of the people, which creates a sovereignty, by making the laws, which are to govern a nation. But it is only a vain flattery to them, who have made their own will the supreme guide of all men, to consider sovereignty as existing of itself. The existence of sovereignty would suppose the existence of a sovereign; and then, either we should receive sovereigns from the hand of God, or they all are to be called monsters, who, in whatever manner, are vested with sovereignty. God is called the sovereign of all nature, because forming it, He has submitted it to laws. He is not the sovereign of men, (by physical coercion, I mean:) there is no

the law is the supreme will, because it is the sum of individual wills; and sovereignty is nothing else, than the sum of those acts and actions, by which the law maintains itself as the supreme guide of the actions of all men: in one word; sovereignty represents the means, by which the law is enabled to force citizens to obey.

A law, in itself, as I have already said, where I have spoken of the laws, is the resulting mean of the variant wills of those, who concur to enact it. Sovereignty is composed of the least portions of the whole rights of men, (self preservation excepted, if we consider it a right, instead of a duty, with man), by them ceded to the the moral being called society.

It is commonly asserted, that men, uniting in society, have ceded a small portion of their respective right of liberty; but that portion of his liberty, which every man cedes to society, *is the faculty of availing himself of the rights given to him by nature*; and of making use, but under certain restrictions, of the means, which correspond to those rights.

The right of liberty should be considered as an abstract right. It was known only after men had had the fatal experience, that they could be obstructed in the exercise of their rights; or in other words, that they could be prevented by unnatural coercion from making use of the means, which provident na-

civil sovereignty established by God, because He, merciful, has not created the means, (in this world at least) by which to enforce obedience to his laws.

ture has placed within their reach, as corresponding to their individual rights. The right of liberty, properly speaking, might be styled the term of opposition to the violence (tyranny) by which men are prevented from making use of the means corresponding to their rights, in a manner suitable to the exercise of their rights, and the fulfilment of their duties.

Man exists! Wherefore he must exist! (4) Therefore he has the right of existence, and its corresponding duty of preserving life: the right of subsistence is derived from that of existence, and its corresponding duty of self preservation; hence comes the right of making use of the means given to man, in order to obtain wherewith to support life. Every created thing that lives, cannot prolong life if deteriorated; nay, deterioration shortens life, amelioration increases it: wherefore we perceive that the right of perfectibility must be inherent in man. In order to subsist and to ameliorate one's individual existence, acquired means are necessary; hence comes the right of property. Man has received from nature a property, which he must preserve, life: by the use of his means, he acquires a property necessary to his subsistence and amelioration: hence springs the right of defence, by which to preserve the property given to him, by which to prevent its being deteriorated, in consequence of be-

(4) The author has treated this subject in 1816, at the University of Pavia, where he defended the following thesis on the occasion of receiving his degree. "*Cum omnium hominum jura sint equalia, perspicuum est servitutem juri naturæ obstari.*"

ing deprived of the means acquired for both, to support life, and to ameliorate it. This is the right the whole of which men cede to society, which takes upon itself to protect the free exercise of the other rights remaining to man; except only the small portions of them, which they are deemed to abandon to society, in order to enable it to preserve the collective body, and to prevent men from obstructing one another in the exercise of their rights.

Thus the liberty, which a man must enjoy in civil society, is the ableness to make use of the means, given to him by nature, for the exercise of his remaining rights; an exercise, which the law takes upon itself to protect by means of the sum of the individual rights of defence vested in it.

It is from the sum of the individual rights of defence, that the ruling portion of mankind pretend to derive both, the faculty and the right of killing fellow-men, by the means of the law. Nobody will insist, that men of their own free will and accord have given the faculty and title to kill them to society; yet every body agrees, that a man in the exercise of his right of defence may take life from another man.

Beccaria himself says: "the death of a citizen can be held necessary only for two motives. The first, when one, even deprived of liberty, should have such connexions and influence, that they menaced the safety of the republic: the second, when the death of a citizen might be the effectual and sole means, by which to deter others from crimes." Beccaria wisely observes, that the first motive can be apparent only in times of

revolution, or anarchy; I will only add; 1st. that the second motive is verified only there, where the laws have no empire, that is, the second motive is a consequence of the first: 2d. that in times of revolutions, or anarchy, laws having no empire, and perhaps being wanting, or violated, such circumstances, although they may urge the death of a citizen, will never justify the punishment of death, when introduced into a penal code; because the mere fact of its being framed supposes the majority of the people obedient to the laws: a majority, which is always necessary to sanction a law, whether civil, or criminal.

However, before proceeding further, it will be necessary to ascertain, whether man, in the practical exercise of his right of defence, may, or not, take life from a fellow-being? I believe he may!—Because, if man has the rights of subsistence and perfectibility, there must be incumbent on him the corresponding duties of preserving existence, and of protecting the possession of all the means, upon which subsistence and perfectibility are to depend. Man recognizes from nature the duty of preserving, even from danger and perishableness, the inalienable property given to him, life. (5) Hence comes the duty of preserving one's

(5) It would appear, perhaps, that I should apologize for making use of the expression, *from natnre*, instead of that, *from God*: yet I confess that I give the preference to the former intentionally; since I aim at showing, that the individual man, even subjected to all the laws of the contingent beings, and abstraction made of his superior nuture, and of the divine breath infused in him, cannot be submitted, whether willing, or not, to suffer death, as a punishment

own life; hence proceeds the corresponding right of defending and protecting it. Hence comes that he, who is under the necessity of defending life, or any other property of his, may place another in such circnmstances, that he be prevented from doing him the offence, he intended to do. But this right of defence (with regard to man in the state of nature) cannot be extended so far as to place him, who intended to do, or did, an offence, in such circumstances, as will prevent him from doing, or attempting to do, offences in future. Hence we must derive, that the measure for

established by the laws. Particularly so, because not a word need be said for Christians; since Christians should but shudder at the idea of undoing the work of God, by forcing his divine breath to depart from the abode created by an act of His will. It would be but impertinent bigotry to accuse me of infidelity!—Nor do I wish, echoing to the sentiments of Voltaire, Volney and Mirabeau, to impeach the Christian Religion, because of the many manslaughters and homicides perpetrated, or caused to be perpetrated, by monsters, who with profane lips, called a bountiful God to witness their impious deeds; yet I do say, (and this I say with that bold frankness, which a guiltless conscience is wont to inspire to him, who speaks from his inmost heart) that if I had been educated to the altar and the pultit, and had been, till this day, compelled to witness the murders, commanded by the law, and to bless its victims, I would either renounce my ministry, or turn all my efforts to lead my contemporaries to be christians: I will say, to lead men to cherish the fraternal ties inculcated by the Saviour, commanded by the Almighty, and required by true civilization. He, who can coldly shed a fellow being's blood, is no christian; nay, he is not a civilized man: he is a monster, created to afflict mankind, because he destroys the work of nature; he is an iniquitous man, because he offends God, most directly, in his likeness.

the exercise of our right of defence, may be extended in proportion to the impendency of the danger. Hercules, assaulted by the dwarfs, wrapped them up in his cloak, and carried them to some distance, in order to get rid of such annoyance. If a boy strike a man with a stick, shall the man take the stick from the boy, and then strike him with it? To take the stick from the boy is all that is necessary to save him from further molestation: he may even strike the boy, if he do so in order to avert the blow aimed at him; but to strike the boy, when he is no longer able to do him injury, will be offence, and not defence.

An individual man considered with relation to the collective body called society (I speak of polished people) is nothing else, and perhaps less than a child. The boy can strike a man with the stick; a man can do injury to society in its members, by making an abuse of the means inherent in man; take from the boy the stick, he will be deprived of the means to do offence; deprive the man of the liberty to make use of the means, he has employed to do another injury, and, the ability will be taken from him to offend others.

There is no doubt that one may, in the exercise of his right of defence, kill another, when he perceive, or have, no other means to protect himself against the injury aimed at him: likewise society may take life from a citizen, when it have not in its power means to preserve its existence, except by destroying him, who aims at the annihilation of that society. (6)

(6) A robber, a murderer, an assassin etc. are, no doubt, horrible monsters; but ah! they are men! Men, yes; and who, perhaps,

However this right of defence cannot entitle one to protect himself even against his liableness to be of-

had been robbed before! Yes, robbed: and by individuals of that same class of men, who try and condemn poor men, who, perhaps, had been deprived of the ability to make use of those means, whence their snbsistence is to be provided for. Such criminals do partially offend society in its members, but cannot menace its existence; nor even aim at menacing it. I do not aim at establishing a platonic republic, nor at urging christians to be humane; because I apprehend impeachments as generally laid against them, who attempt to have the poor, and the wretched to be holden men, entitled to enjoy life. Christian feelings, highly prized, when enumerated from the apostolic chair, cause him to be holden a visionary, who contrives to have the generality of men yielding to them; and fatally the more we admire to hear of them, the less we like to practise them. A fine pair of gray horses speedily draw the coach of the pious woman on a Sabbath day; a poor old man shivering crosses the street; full of cold and without a penny, he must hasten lest the flaming steeds round the corners of his hills: if he curse the horses, he is a wretch: but she is a pious woman because she ran to church. I aim not, I repeat it, at bringing men back to the golden ages, yet I wish to persuade the rich, that their safety requires the lives of all offenders to be spared. Rich men think that the poor fear death, and consequently love life, as much as they do; because they do not perceive that the very two elements, which engender that fear in the rich, are wanting in the poor: namely, the endearments of life, and a reproving conscience. Many of the rich feel uneasy, because they have not improved all the occasions to be useful, others because they have grown rich amidst the curses of their creditors, and the whole of them conceive better the idea of eternal happiness, and dread eternal wretchedness, because at all events, they will be deprived of the enjoyments of this life; but they, who are placed between starvation and crime, fancy not the pangs of death, because real and present evils always

fended, by taking life from him or them, whence he may apprehend offences. Nature gave equal rights to all men, and affixed to every right a corresponding duty; and, to enable men both, to exercise their rights, and to comply with their duties, it furnished men, although in different proportions, with the means required: wherefore they must improve the means by action, guarantee their rights by watchings: they cannot be idle, and prosper; they cannot be unmindful of their property, and have it always untouched! It is just because of having the right of defence, that one must be ready to make use of it, when circumstances require it; but no man can be suffered to destroy all mankind in order to free himself from the apprehension of possible annoyance, as the despots and tyrants show themselves inclined to do. It is owing to this circumstance, that the state of civil society is to be preferred to that called of nature; because we, renouncing our active right of defence and vesting it in the law, free ourselves from both, the apprehension of annoyance, and the watchings of defence; because the law creates the officers, who are to watch for us, and the means, which are to protect us, our property, and the free exercise of our remaining rights.

Nevertheless men, after having recognised as inherent in them the rights of property and perfectibility, have assumed, in order to protect them effectually, by

free men from the apprehension of future and speculative evils; it is necessary to place before his eyes a greater wretchedness, and nearly as great as that which he endures, if they wish to deter an one from crime.

means of their right of defence, to extend, in its exercise, the right of defence to obtain an indemnity for those injuries, which they were not able to avert: therefore I shall now briefly argue, whether one may do an offence in order to obtain indemnity for the injury he has received?

In times of barbarity he, who deemed himself to have been calumniated, or prejudiced, in any way, in the free exercise of his rights, appealed to the sole law of infant society, arms: and thus, if he was successful, forced the calumniator to confess his guilt, or the invader of his rights to acknowledge his title. This often happening, that he, who would compel another to acknowledge his misbehaviour, slew his adversary; the multitude, always guided by the effects, and always ignorant of the causes, believed the offence done to another to be a just vengeance for the injury received. Hence society, which grew from among uncivilized people, gathered together, adopted the barbarous principles of the multitude, and assumed to itself to commit, by means of the law, the assassinations, which were first committed by individual men. (7)

If we consider vengeance to be lawful, it will be yet necessary to determine the confines, within which

(7) Thanks to the pusillanimity of statesmen, the selfishness of rich people, and the indolence and carelessness of philosophers, philanthropists and moralists, we must, blush at hearing the boisterous shrieks of the champions of modern civilization, bow to the wisdom and humanity of the Goths and the Lombards, and be governed yet by the laws of John and Philip.

the offence is to be holden, which aims at revenging the injury recevied. Resorting to words, and to definitions of words, we should have the extreme of the extent of the practical right of defence represented by the words, *vindication*, *vengeance*, *revenge*, as derived from the latin words, *vindicatio*, *ultio*, *vindicta*.

Cornelius Fronto de diff. voc. says: "*Interest autem hoc inter ultionem, et vindictam: quod ultio factum vindicet: vindicatio sive vindicta futura prohibet: atque eam ob causam Mars ultor, non vindex dicitur.*" Cic. pro Sylla. "*Ego ille conspirationis investigator atque ultor, certe non defenderem Syllam, si conjurasse arbitrarer.*" Idem 2d, de inv. "*Vindicationem per quam vim et contumeliam defendendo aut ulciscendo propulsamus a nobis et a nostris, qui nobis cari esse debent, et per quam peccata punimus.*"

Fronto and Cicero have spoken of vengeance and revenge as they were then desumed to be from their effects. Although, even admitting, that *vindicatio* aims at both, to defend and to punish, this would not result, that, either to defend one self, or to punish the aggressor, the punishmeut of death is to be established by the law! To punish is used by Cicero in the sense of putting one out of the way to do again offence; or in other words, to place him, who did the offence, in circumstances, as will take from him the ability to offend.

However *vindicta*, in its most natural signification, should mean *to free ourselves from injury*, as it will appear from Livius Lib. 3. *A cujus erudelitate vosmetipsos armis vindicastis.* This must be the true significa-

tion of *vindicatio:* to resume, by means of the right of defence, the free exercise of our rights, when we have been deprived of it.

Carro Oraz. 1a. di Gregorio: "*con le man brutte, e con l' anime profane si cacciano in queste cose santissime, prima che sian pur fatti degni d'intervenirvi; se ne vendicano la preminenza etc.* The meaning of *vendicare* as used by Carro appear to agree with that of vindicastis, above cited; that is, to attribute to one self a title, whether it be by resuming, or assuming it. And society does in fact assume to itself the right of *vengeance*, as emerging from the right of defence, which, inherent in man, has been wholly vested in the law by all the individual men, who are made to compose a civil society.

Vindicatio, according to Cicero is composed of two elements: the one to repel an offence; the other to punish him, who has done injury. However, Cicero did not establish, that vindicatio should be divided into two actions, viz. to repel the offence, and to punish him, who did, or intended to do, an offence. To punish him, who does an offence is rather a concomitant circumstance of the action, which repels an offence; since nothing but a greater violence can repel violence.

Wherefore, whether we understand by revenge, or vengeance, to repel injury alone, or to repel the injury and to punish him, who does injury; or even to seek compensation for the injury done to us, the right of defence can never be extended beyond the necessary protection of our property, whether the inalienable,

or the acquired. Because society is as much placed in the necessity of taking life from the offenders, in order to preserve its existence, as a giant would be compelled to murder a dwarf in order to free himself from annoyance.

However the law, which is unable to repel injury, contrives, by means of the individual rights of defence vested in it, to prevent crimes, establishing the penalties, which shall correspond to the perpetration of criminal actions; and the penalties established constitute the virtual force, which the law opposes to the violence of criminals: since he, who intends to perpetrate a crime, has to overcome the fear of the punishmeht, which awaits him! Hence the law supplied its inability to repel the injury, by requiring an indemnification for the injury it receives. To obtain indemnification it was necessary to place the guilty in such circumstances, as would compel them to acquire property in behalf of society, while preventing them from doing offence anew. Wherefore we perceive that the law establishes penalties with the double view, to have society indemnified for the offence, it has reeeived, and to prevent the guilty from doing new offences, before he has atoned for the one done: and this leads us to take into consideration the second mode, in which a punishment may be unjust.

These are words of Beccaria: "a punishment to be just must only be as severe as its intensity may prove sufficient to deter men from crimes." Society is deemed to derive the title to inflict punishments from the individual rights of defence, which, by the

mere fact of being ceded to it, make incumbent upon society to protect the property of them, who compose it: therefore the law establishes punishments, by which society may derive an indemnity for the injury received, and be protected against new injuries. (1)

Let us now see whether the punishment of death fills these two extremes.

Man has rights, because he must fulfil his duties; and every right with man supposes a corresponding duty; wherefore society, which is nothing else than a collection of men, must follow human nature, because that is the nature of the elements, who compose it. Hence society, from the very fact of being invested with the individual rights of defence of its members, must assume to itself the exercise of that right in behalf of them, who ceded it; and the right of defence having been given to man, to protect by it his property, the fulfilment of his duties, and the free exercise of his rights, society takes upon itself to do collectively what men were bound to do severally: hence it must cause indemnification to be given to him, who received an injury, and consequently deprive him, who did injury, of the means to offend, before he has atoned for the offence done.

Thus the law, by establishing the punishment of death, violates the constituent principle of civil society, it does injury instead of affording protection! Because

(1) The sufferings of the convicts should be a consequence of their contributing their natural means to acquire property, to indemnify society, but they cannot of themselves be punishment, although it be cruelty to cause them.

society is to require, by means of the law, an indemnity for the injury received, as the sole means to fulfil its duty, to protect the property and the free exercise of the rights of its members. Society makes it the first object to deprive a criminal of the ability to do offence, while it should be but the consequence of exacting from him the indemnity, which is to correspond to the injury society has received from his criminal action.

Society violates the constituent principle of civil society, because if it receives the several rights of defence, and vests them in the law, it makes, by that very act, the individual accountableness of its members incumbent upon the law; and therefore it must protect, forcibly, the inalienable property, to preserve which every man is bound. That is, society sins against the laws of creation, because it destroys that, of which men are not the masters, by committing suicide in the person of him, whom the law slays by means of that same right, which should protect every man's life.

Society receives no indemnity whatever from the death of the criminal; nay the law subjects society to another inconveniency, by charging upon it the expense necessary to commit public murders. It fulfils, as many an one observes, the other extreme of depriving the criminal of the ability to offend society again; but this mode of filling that extreme, although it may satisfy vampires, will never give satisfaction to man! It is quite unnecessary to add, that men, who call themselves christians, will not consider the pleasure of obtaining revenge to be a sufficient indemnity

for the injury society has received; because indeed, I know not how to name a more perverse being in the whole animal creation, if the cold and unprovoked destruction of a fellow being is to be a source of pleasure to man. No brute, with the exception of the tiger perhaps, will destroy animal creation, unless incited to it by physical want or violence.

Man may, by the mere fact of joining a civil compact, renounce his acquired property, and the exercise of the whole of his rights, but he cannot exempt himself from the duty imposed on him by nature and its Ruler; likewise society cannot consider invested in itself the title, which man cannot renounce. But even supposing, that society might be invested with the right to kill men, does the death of the offender indemnify society for the injury it has received? And if it does not, why is that punishment inflicted?

Thus the punishment of death is unjust: 1st. Because it is inflicted by a collective body, which tyrannically assumes to itself a title, that belongs to no one of them, who compose it; that of taking another's life, when the necessary protection of his property requires it not; 2d. Because it leads society to violate its trust; that of exercising the rights of defence, ceded to it in behalf of every one of its members; 3d. Because it makes society sin against God, fulfilling not the duty, which corresponds to the right of defence, the preservation of every man's life; 4th. Because it wrongs society, depriving it of the indemnity, which should correspond to the injury, it has received.

The last thing, which may be resorted to in order

to support the justice, or rather the plausibleness of inflicting the punishment of death, is the necessary requisite of a penalty, to deter, by means of the example, others from crimes. I shall speak of this requisite of penalties in the next chapter; meanwhile I say, that the effect of the example is, by no means, a constituent element of punishments, though it is inherent in all punishments, that are adequate to the injury they avenge; in a manner that we should know the justice of a punishment, by the effects its example produces: because nothing is so powerful to extinguish a tendency to crime, and to cause the salutary fear of punishments to rise in human breasts, as the example of the just privations and consequent sufferings, to which the guilty are subjected.

CHAPTER SECOND.

Inefficacy of the punishment of Death.

A punishment may be inefficacious in two ways: 1st. When it is not in just proportion to the injury which society deems itself to have received from the criminal deed it punishes; 2d. When its degrees of intensity cannot be increased and diminished, as they should correspond to the different degrees of enormity of the crimes, to which it is applied.

It appears to me, that nobody, however able a writer

and perfect logician, will be able to prove, that the punishment of death is in just proportion to the injury which society deems itself to have received from the criminal actions of them, who shall suffer death!

This may be the case, that in times of barbarity offences were atoned for according to Cicero's definition of revenge. Kinsmen and the friends of him, who had received the injury, were those, who assumed to themselves the right to revenge an offence; although not for the purpose of inflicting upon him, who did the offence, a punishment, that should correspond to the extent of the injury received, but to gratify the predominant passion of barbarians, anger. Their vengeance was not only provoked by the death of a person allied to them, but they were wont to offend in order to obtain revenge for any offence done to them, or to their connections, or friends.

Better to distinguish the tendency of human hearts, we should separate the state of barbarity from that of nature. It is improper to call a state of nature, that of barbarity; because this violates all the laws of nature.

We should, perhaps, separate the golden age also from the state of nature. The poetical descriptions of the pastoral life, seducing our imagination, have led us to fancy, that such a purity of manners and holiness of habits, as were described by fanciful historians, were in fact the endowment of people, who, although totally ignorant of the laws, have been supposed to have obtained the polish, whence just and wise laws are wont to proceed. Either such shep-

herds, as are described to have lived in the golden age, did not exist, or they were the remnants of a decayed empire, or they made part of a great empire still flourishing. The shepherds of Egypt according to Rolin appear to have been in a very flourishing condition in consequence of the wise polity of their rulers; "It was indeed," says Rolin, "to these two professions (husbandmen and shepherds) that Egypt owed its riches and plenty." The shepherds, perhaps, who fed their cattle among the ruins of Troy, were polished. But the Greeks of Theseus, and those gathered by the lyre of Orpheus, were not shepherds; nor were they shepherds, the fierce Spartans, or the never civilized Hellots.

In the state of nature men live almost alone: they have plenty to live upon, because they need but food: knowing but few wants, they cannot be made to store provisions, by gathering and raising cattle; since the storing provisions supposes a foresight, which is wont to derive from experience and the multiplication of wants. In a state of absolute barbarity men live together, but idle: they eat what they have at hand; and, at the utmost, go to seek for food, and take it whether offered to them by provident nature, or stored by others.

But as soon as such barbarians, who had chancefully, at first, fallen in with people, whose industry was greater than their ability to repel violence, began to pursue regularly their depredations, they entered into a kind of civil compact. By the repetition of the same acts they were taught to remove embarrass-

ments, and to protect themselves in their marches; and thus laid down the principles of our military tactics. The necessity of making every one satisfied with a portion of the booty acquired led them to acquire the first notions of jurisprudence. (8) But such peo-

(8) Here we might trace the origin of civil society. After those savages had accustomed themselves, in consequence of their repeated excursions and marches, to follow a guide, and to submit to certain rules, as well with regard to their order in marching, as to the distribution of the booty acquired, it would have happened, that the great quantity of cattle, they had gathered, required them to stop; because of the great difficulty to carry it with them. The inclemency of the weather, and the trees, under which they naturally sheltered, would have taught them to raise those huts, which civilization was to change into splendid buildings. During their marches the cattle would have fed, and consequently those barbarians would have learnt that they must be fed.

Women are more laborious in a state of barbarism, for this plain reason; that in their marches, they were compelled to carry their children, whom they alone could nurse; and because, being left behind, in consequence of their embarrassments, they were the first to observe the manner, in which the cattle fed, and the tender calves sucked the milk.

But this same people on perceiving, that their provisions were decreasing, would have prosecuted their depredations; though in a different way from the former: because the elder, women and children, would have remained in their huts, and the younger, and robust people, would have prosecuted their excursions with the intention to return again. The old Chief, because in all probability their guide, would have been an elderly man, would have remained in the settlement, while the robust portion of the people went under another chief to seek a supply of provisions. Here begins the civil compact, and not from the universal assemblage of men, as Rousseau was pleased to dream of.

ple, having no other laws than those, which necessity had taught them to enact, and being continually armed or making use of their physical strength, possessing no

The Chief will have preserved the same rank in the settlement, he had in the marches; because men, when once they have submitted to the guidance of others, will naturally choose to be guided: this springs out of the moral and physical indolence inherent in man, before civilization has moved the screws of human industry. The Chief will have been the arbiter of all the quarrels or complaints of his followers; hence his decisions, after his death, will have been venerated as much as he was respected in his life time. The children of the Chief, owing it to their living in the same hut with their father, will naturally have been called upon by people, who were accustomed to have their complaints defined by the inmate of that hut, to pronounce upon the claims of the rising generation: this is the first step which people gave towards the succession to royal authority.

Now, whether we suppose, that those, who had gone to seek provisions, made their return, or that a new people, following their excursions, fell in with these settlers; we must have a change in the government; because they, who are strong, never submit to the government of those, who are weak. This might, perhaps, lead us to account for the astonishing feats of Hercules, Theseus, etc.; they had fallen in with people, who were new settlers as those; and consequently being the whole of them, either old people, women or boys, wore easily subdued by a robust man in the vigor of fresh manhood.

If we suppose our settlers to have remained unmolested in their huts, it will have happened that the kinsmen of the successors of the Chief, according to their talents, and their manners, will have been noticed by the people, and called upon as arbiters in their disputes. The new rising generations, knowing nothing of their former chief, will have felt but little respect for his successors; hence one, who made himself popular, would naturally become the arbiter of

other means, by which to repel violence, but the same whereby offence was done to them. Hence, he, who was to be punished, being armed and surrounded by

the whole settlement, and cause the successor of the Chief to be neglected: this is the first shake of legitimacy.

Men, who raise cattle, and consequently till their lands, are made sooner to enjoy both plenty and leisure: plenty inclines men to multiply their wants; leisure, while it guides to the invention of the useful arts, disentangles the seeds of human ambition. Hence the many, who were popular, being unwilling to submit to one of them, were under the necessity of agreeing, first a temporary authority, then to assume it collectively in themselves: here begins aristocracy. The Magna Carta of King John is an illustration of this hypothesis.

The uncontrolled ambition of the few, and the intrigues and secret managements of every man, [who wished for power, will have caused the multitude to suffer innumerable evils; and either in consequence of quick passions, or excited by a single individual, like the Roman people, will have snatched the power from the hands of the few, as the Romans did from those of the *Decemviri:* this is the epoch of the Empire of the laws. This might be called the first form of civil government, if we date the origin of civil society from the time, in which laws were agreed to. And in fact, it could be but after the experience of the evils, which men are liable to suffer, that laws were caused to be enacted. However these first laws could not be such as would prevent men from assuming authority or influence to themselves; and therefore, people must have returned, and this out of the very perfection of which civil society is susceptible, to the government of one: hence to proceed to establish the absolute empire of the laws, after men had acquired, from their own experience, the necessary wisdom to enact wise laws.

The hypothesis of the Patriarchical government is as unfounded as *Rousseau's contract;* because savage people are naturally inclined to spread themselves, and not to crowd together: for the very

kinsmen and friends, rendered it necessary to surrender him, before he would be caused to suffer punishment; and the slaying him was, most commonly, the consequence of the exertion made to surrender him.

In the state of civil society the case varies materially, He, who is to suffer death, is not only unarmed, but wholly unable to resist. Society, which, it is said, having been offended in the person of one of its members, requires from him, who did the offence, an indemnity, which shall correspond to the extent of the injury, it has received! Agreed. Yet, is it by burning the dwelling-house and barns of him, who has set fire to his house and barns, that one would obtain a proportionate indemnification for the injury. he has received? or rather by putting himself in possession of the house and barns of him, who caused his own to be destroyed? And this is what society should do: it should put itself in possession of the property, that belongs to the criminal. That is, society should virtually assume to itself the exercise of the rights, which belong to him,

reason, that to crowd together, supposes people to have built houses, and to have learnt to till their lands and to raise cattle; insomuch as we would have the cultivation of the arts to precede civilization. Hunger makes men hunters, and consequently wanderers; and as long as the ground sends forth something eatable, they will go to gather it; and it is only, when they cannot find a plenty of food, that they learn to plant seeds. Nor would it avail to have the Patriarchal government to derive from Abraham; because at the time, in which his generation was chosen to make a people, men had already reached the stage of imperfect civilization, as I have above sketched.

who offended it: and this is obtained by forcing the culprit to make use of the means, as corresponding to the exercise of his rights, in order to acquire property, which wholly, or in part, shall belong to the same society, which has been offended.

I have shown above, that he, who dies at the hands of the law, causes an injury to society, by the very fact of being subjected to suffer punishment; therefore the punishment of death is inefficacious with respect to the indemnity, which society is to obtain from the guilty.

Even admitting, that punishments are to be held the representatives of the injury, which one may do to another in the exercise of his right of defence, this would not follow, (as I think to have demonstrated, where I have spoken of the injustice of the punishment of death,) that either an individual man, or a collective body of men, should do more injury to another, than that which is necessary, in order to repel an offence, and to prevent him, who did an offence, from repeating it, before he has atoned for the offence already done.

Society founded in this, that one may, in the exercise of his right of defence, take another's life, inflicts the punishment of death upon those, who perpetrated offences, to avert which would have required the taking life from the offender: that is, it punishes murder with death. But society is not entitled thus to punish: 1st. Because the individual right of defence, which has been vested in the law, exists no longer after one has ceased to live, since it is inherent in man: 2d. Because

society as the representative of all the rights of defence of those, who compose it, is bound to protect the inalienable property of the criminal, who also has vested in it his right of defence. (9)

Having seen, that the punishment of death is inflicted without effect, whether it be to obtain the indemnity, which society is to receive from the guilty, or to represent the right of defence of him, in whose person it has been offended, we should now consider whether the punishment of death is practically in-

(9) I cannot agree with those, who decline to behold a man, in the wretch, who has broken the laws. Society is not the being of fancy, as the *few, who move the screws of the great machine*, pretend to lead people to believe. Either society is the moral representative of the rights of all men, who compose it, or it is an unnatural tyrant, whose soul is the ambition of the few, who oppress the many. The few reap immense benefits from the state of civil society, and the many are stripped of the rights, which they hold from nature. The one is triumphantly driven in a sumptuous chariot, while numbers of wretched creatures starve in quivering nakedness. And the luxury of the one strips the garments of the numbers; while the nakedness of the many luxuriantly adorns the chariots of the few! Then, why should the law strike the last blow to the wretched criminal, to whom, the sole choice, perhaps, was left between crimes and debasement, to support life; that inalienable property, to support which the poor is unable, in the present state of civil society But even supposing, that all crimes proceed from the natural perversity of men, how can society expect to inspire men with a sense of the respect due to the property of others, if it sets forth the example of a wanton violence against a property, which both nature and the civil compact require society to respect? *Behold a man is naked!* Take life from him!.....and then hope, if you dare, that the poor will be taught to respect the life, and the property of the rich!

efficacious to punish, and consequently to prevent crimes. And so it is; because it cannot be in proportion to the injury it avenges; and because it is not susceptible of the degrees of intensity as should meet the various enormities of criminal intention and material injury.

Every body will admit, that the punishment of death cannot be in just proportion to offences, which have not caused loss of life; since life is an inalienable property; therefore it cannot be taken as the corresponding indemnity for the loss of alienable property.

To subject him to suffer death, who deprived another of life, will, no doubt, enable society to cause the guilty to suffer an injury equal in extent and ferocity to the criminal action, which it punishes; but it will never enable it to obtain the indemnity, which corresponds to the injury received. Society in consequence of the death of a good citizen is deprived of the benefits, which the labor and industry of the deceased contributed to the welfare of the collective body to which he belonged. Then society, in order to make up for that loss, deprives the guilty of those benefits, which as one of its members, he was entitled to receive from society, and, besides, forces him to acquire, by his labor and industry, property, not for himself, but for society. In this manner society is not the loser; because it supplies the loss of the benefits, it would have obtained from the labor and industry of a good citizen, by the forced earnings of a wicked one; and compensates its trouble to watch over the guilty, by the cessation of the protection, which it

should afford to both, the murdered one and the murderer.

If we wish to know the degrees of intensity, of which the punishment of death is susceptible, we must look to the exploits of the holy inquisition; we must look to the grand feats of crowned monsters, whom human weakness creates, base flattery supports, and priestly imposture sanctifies. If men can represent to their minds those scenes of horror, without a shudder, let the punishment of death afford a rational amusement to people, who are wont to compare their own dress to that of savages, to behold their civilization!

In the penal code of Napoleon, in order to punish parricide in a distinguished manner from a common homicide, the punishment of death was increased, by subjecting him, who had commited parricide, to have his right hand cut off before he suffered death. I have since then very much wondered, that every body should condemn as atrocious a punishment of but a few instants more of sufferings, while nobody has been willing to economize the least portion of their breath, to express their disapprobation of cold assassinations, not less abominable, because of their being commanded by the law!

To torture the guilty by means of a wheel, to have their members dislocated by means of a rope; to have human limbs forcibly parted and driven away at the tail of a horse, and to have men slowly frying in their own fat at a tardy fire in a copper oven, although able to show how unworthy we are of the likeness,

we bear, will never teach us how to discover in the punishment of death those degrees of intensity as will meet the various proportions of human perversity, and the different atrociousness of crimes.

There is no doubt, that, in a state of civilization, to cut off the hand of a criminal, before he is caused to suffer death, is barbarous; but, thanks to the stupid ferocity of our rulers, and to the negligence of legislators, we have been placed between the voracious Charybdy and the treacherous Scylla: either our criminal legislation must proceed gaining new degrees of ferocity and savage barbarity, or criminal laws must indistinctly or unjustly punish the guilty, without preserving any proportion between crimes and punishments. There is no mean! Our laws must be, either cruel, or both cruel and unjust. Cruel laws make us sin against God, nature and civilization; but the unjust, against man also. Whatever is unjust must be held in contempt; and this contempt is the cause of the savage constancy, with which offenders meet the severity of the law. It is but a fatal blindness to hope, that unjust laws, however cruel, will secure us against the numberless evils, which afflict society!

When we see him, who commits robbery on the highway, and him, who forces his way into a dwelling house, and him, who counterfeits the public money, to be punished with death, society, if not selfishly blind, must feel, that it has deprived itself of the means adequately to punish him, who kills as many travellers, as he meets with; and him, who enters a house, and slays the infant children in the arms of their supplicating

mothers, and the mothers after them, the distracted husband beside the lifeless wife, and the father upon the expiring sons.

When we behold him to suffer death, who waited for a person unknown, and deprived him of life, how can we expect to find an adequate punishment for the monster, who plunges a dirk into the breast, whence life and condition were derived to him, and transfixes a heart still palpitating with a father's love?

We have not the adequate means to punish the vampire of civilization, who, in the enjoyment of domestic peacefulness, and in the sacred stillness of the nuptial chamber, deprive of life the one, whom he first taught to sigh; the sweet companion of his domestic life, who had shared all his woes, who made all her happiness to consist in soothing his sorrows, and in seeing the sweet pledges of mutual love grow worthy of a father's smile!

To decry against tortures, and against the exacerbation of the punishment of death, amounts but to make a solemn mockery of the most sacred feelings of humanity, as long as we lavish so indiscriminately the punishment of death. Should we not be ashamed of the comparison, rather than boastingly decry against the times of illiterate barbarity! Barbarians inflicted death upon one, who could make good his title to commit crimes, by giving the death, he was to suffer: we, by means of the law, and the hangman, slay, with a cold and ferocious barbarity, victims, who loathly wait for their fate; ill-vowed victims, whom our selfishness and indolence offer to the blood-swolen idol of

modern civilization, which supports through streams of blood the fortunate few, who purchase their indolence with human blood. Half a day's amusements, sacrificed upon the altar of human fellowship, would enable us to discover the means, whence the rich should enjoy real happiness, and see content their fellow men, who are poor!

Some believe, that punishments ought to be severe, because the example of them was to deter men from crimes: wherefore they are in favor of the punishment of death, and think, that the more a punishment is cruel, the better it is able to deter men from crimes. Our standard author appears widely to differ from them. "It is not the intensity of the punishment, that produces the greatest effect upon human minds, but the extent of it; because our sensibility is more easily and efficaciously moved by the least, but repeated impressions, than by a powerful, but instantaneous emotion. The power of habit is universally yielded to by sensitive beings; and as man is made to speak, walk, and supply his wants by the habits, that are derived from the repetition of the same actions, thus moral ideas are caused to remain impressed in human minds by lasting and repeated impressions. It is not the terrible, yet instantaneous spectacle of the death of a criminal, but the long and hard borne example of a man, who, deprived of liberty and almost changed into a beast of burden, indemnifies the society, which he has offended, that will prove to be the most powerful restraint from crimes. * * * * * *

* * * The dreadful and dolorous impression, which the punishment of death causes in human hearts, cannot compensate the forgetfulness inherent in man, even with regard to things the most essential to life; a forgetfulness, which even human passions accelerate. A general rule:—violent passions cause surprise, but not lasting impressions; and it is from this quality inherent in passions, that passions cause such a revolution in human minds, as to make, sometimes a Persian, and sometimes a Lacedæmonian, out of a common man. But in a free and peaceful government impressions should be frequent rather than violent. An execution is a spectacle for the great mass of the people; an object of pity mingled with despite and horror, for the many: and these sentiments occupy the minds of the spectators more, than the salutary terror, which the law pretends to inspire in human breasts by means of those examples."

Daily experience should already have convinced us, that the punishment of death terrifies not them, whom a fatal combination of circumstances leads to crime. Atrocious crimes have been multiplied in proportion to the lavishing of capital crimes. Nay, our cruel and inconsistent laws have put them in the disgraceful necessity of perpetrating the most savage deeds, whom the corruption of the heart led to crimes.

That death is not an adequate punishment for crimes, and therefore inefficacious to prevent crimes, every one may easily perceive, if he observe, that, in the present state of civil society, suicides, scarcely

heard of among the ancients, are so frequent among us; (10) and more so in those countries, where riches

(10) I assert it with the most solemn positiveness, that in the course of one hundred years suicides will be found to have been committed in the very same proportion to the public executions commanded by the law; except however the times of revolution, because then citizens, being the whole of them pervaded by the ambition of parties and the vices of anarchy, aim at destroying their opponents, and when disappointed, are murdered before they think of committing suicide. At about the middle of the year 1827, a public execution took place in Boston, and on the next day a lad, who had gone to witness the execution, availing himself of the notions of self-destruction, as are proclaimed by modern civilization, destroyed, by the rope, his own life, and left his desolate parents to curse the law, which taught their child to commit an abominable crime. A few weeks since, but a few days after the execution at Salem, a man in Washington street, opposite the old South Church, in the same city, by means of a rope, put an end to his mortal career. I remember to have heard, in my younger years of a great many suicides in Mantua, the city where I was born, and I must confess, that up to my nineteenth year, the epoch of the fall of the French government in Italy, I considered it as a matter of course to destroy one's own life.

If we look to the mode of committing suicide, we shall still more convince ourselves that the law opens a public school for suicide, and murders, by means of public executions. In England, people rush to hanging themselves with the very same coldness, with which the executioner throws the victims of society into eternity; while in Italy a man, who had determined to commit suicide, would rather live, than prevent his spirit to abandon its abode, but through whence it used to make itself manifest, under the garment of words. If there is any thing more inconsistent, or more foolish in the present state of society, than to pretend deterring men from assassinations, by setting the example of the little worth of human lives, as the punishment

are the only representatives of civil happiness, and the punishment of death, the only means to deter men from crimes! "One, who sees another continually suffering," these are words of Beccaria, "says to himself—I also shall be reduced to so miserable and degrading condition, if I commit the same crime. That the prospect of unavoidable misery and prolonged servitude terrifies men more than death, we witness daily. A failure hangs him, who is to live in poverty; a christian depredation hangs the wretch, who wishes not to till the land of others! Behold a man, whose life is endeared by all the sacred and sweet ties of society, religion and nature, destroy his life at the

of death proclaims, I leave it to all men, who have an understanding of their own, to decide. Cain slew Abel, because in a fit of passion he struck him with the instrument he had in his hands; and it was only after his anger was quelled, that he approached Abel, who rose not. And when he perceived that he answered not, and could not stand on his feet, then he suspected that he lived no more, and that his blow had been the cause of it. Then he conceived the idea of destruction, and was horrified with it; because destruction is abhorred by all beings, that live. This is the reason, why deaths by stabbing are the most frequent; because the hand corresponds to the quick emotions of the heart, which passions govern.

Men, of themselves, would never fancy of taking a man's life; they learn it eventually; yet deaths, except by sudden passion, are quite uncommon among uncivilized barbarians; while among us they are very common, since the law has opened Gymnasiums for human annihilation.—One crossing a river in company with another, who remained a prey to the waters, learnt that water may cause destruction. The savage bringing to the greatest perfection a stick, learnt that an arrow could cause destruction; and so it is, that, among the ancients, a great many committed suicide by means of arrows.

sad prospect of an impending state of dependance! Behold the foamy billows toss against the shores black corpses! Behold the trading vessel and the distressed countenance of the captain! Many a slave, born of christian piracy, has sought liberty in the deep bottom of the ocean!

Wherefore, if men of education, living in a state of civil society, and notwithstanding the guidance of a divine religion, destroy their own lives, in order to fly from poverty and dependance, which amounts to the same as slavery, how can we expect that poor and helplessly dependent men, whose morals have not been rectified, should be deterred from crimes by the fear of death, only because it is the law, that inflicts it? Nay, how can we expect to deter the poor from crimes, if crimes are made to become a means to free them from both want and dependance? Is it not extremely unwise to place the wretch between the guilty hope of being benefitted by crimes, and the certain termination of his sufferings by death; which no man can avoid, whatever may be the difference in the mode? Particularly so, because our mode of administering justice, by times, causes guilty hopes to be realized, and often makes this punishment enviable, always despisable. Who would number the many, who being determined on committing suicide, resorted to crimes, after the same principle, that a man, left with an uncurrent note, buys a lottery ticket?

Some will observe, how will the law be enabled to punish the most atrocious crimes, in a proportionate measure to the less atrocious, if the punishment of

death should be abolished? And I ask first; does the punishment of death offer in fact such a proportionate measure? All punishments may be efficacious to prevent crimes, if wisely and economically made use of, and always inevitable! Who doubts that the *Parricide*, by being condemned to hard labor and exposed every day to the sight of the people, wearing on his forehead in distinguishable characters "*Parricide*," would receive a greater punishment, than to have his right hand cut off, and to suffer death? At sight of him the spectators would shudder with horror, and he, almost by reflection, would feel the quivering of abomination at thinking of himself! Then he would unavailingly invoke that termination of a life, which true repentance alone can enable him to bear! This punishment would be strictly just, and efficacious too, by the example: because the horror felt at the sight of such a monster would always overcome the feeling of compassion, which his wretched condition would inspire. Let such wretch have wrought on his forehead the characters, which Cain bore, and we shall see in real life, the great ghosts fly at the approach of the parricide in the tombs of the Scipios. (*a*)

Spectators will have present to their minds the aspect of the wretchedness, to which a fellow being is subjected, but this will be only to make them shudder at the recollection of the horrible crime, he has perpetrated: the spectacle of human sufferings will always cause a feeling of compassion to rise in human

(*a*) Verri notti Romane, notte terza colloquio quinto

hearts, but the horror for the criminal will always subdue that feeling; and thus the punishment will be in just proportion to the crime, as we have it from Beccaria. "The limits, which the legislator should prescribe to the intensity of a punishment, it appears, should be desumed from the feeling of compassion, which it causes to rise within the heart of the beholders; because when this feeling begins to prevail over all others, then the punishment becomes a torment rather for the spectators, than for the criminal." If a punishment cause *the salutary terror, which the law pretends to inspire*, and which the example *should* inspire, then it is a perfect one: because the criminal indemnifies society by his labor; the privation of liberty takes from him the ability to offend society anew; and the example, his condition offers, fills with terror the spectators, while it inspires them with the necessary horror for the criminal, and the necessary abhorrence for the crime.

I hope no one will apprehend such a punishment to be unchristian; because, if it is essential in our religion, that the hope of future salvation should always be abiding in the hearts of its followers, the punishment would, *per excellence*, be christian like: because society, by sparing the life of the guilty, affords him the necessary time for repentance, and by the punishment, the means to atone for his crimes; while, allowing to the criminal the time for self-conviction, it will enable him to bear, and cherish his sufferings as a just atonement, undoubtedly so, for his crimes.

I must confess, that I always experienced a feeling

of indignation to rise within my breast, when good breeding required me patiently to listen to the idle talking of those, who pretend, that a sad experience shows the practical necessity of the punishment of death; because nearly the whole of them, who are released from jail, perpetrate new crimes. And because the poor man is always to bear the penalty for the indolence of those, who govern, the necessity is derived, from those facts, of destroying the life of the offenders, in order to protect society, as it is boastingly asserted. But, when the offenders were released, had the causes, which first led them to crimes, been removed? Let the form of government be tyrannical, or popular, that civil society is not just, where every man cannot earn wherewith to support life. It is, indeed, ridiculous to require, that a great majority of men should live in a worse condition in the state of civil society, and be fond of it. God gave life to be preserved and the corresponding means to support it, to every man! Every man is bound to get the means to sustain life; and it is for the worst, if society places a poor man between virtuous starvation, and ignominious death! Because, in all probability, every man, even by crimes, will get wherewith to live, rather than spontaneously suffer the death, which the law, always, keeps in reserve for him!

Mark, a man hungers! Do you feed him? He is naked! do you clothe him? If not, you break your covenants; you drive him back to the first law of nature, and you hang him, not because he is guilty, but because you have left him naked and starving!

Besides, society places itself in the impossibility to convince its victim, that he has deserved death; a conviction, whereby alone the salutary effect of the example is to be derived; a conviction, without which any punishment will prove practically inefficacious to prevent crimes. *Life may be dear to all of us, my Lord; and were it possible, that mine should be spared yet a while, that continued life might make a better atonement for past actions than a death, which, abrupt and premature, calls for repentance, while it forbids redress.*

Time in fact is wanting to convince the victim, that he has deserved death, and although he may repent through fear of eternal damnation, yet, a wretch while in this world, his conviction and repentance will be too sudden to make any salutary impression upon the minds of the spectators, who alas! only learn from legal assassinations to despise death, and to abhor, more and more, that class of men, who hang the poor.

The injustice itself of the punishment, generally felt, although not universally acknowledged, is a powerful cause to render the punishment of death inefficacious to prevent crimes. It will ever be in vain, that we shall expect to deter men from crimes by the severity of the punishments to be inflicted, if the justice of such punishments is not only universally acknowledged, but also universally felt; unless, the whole of the civilized world, alas! shall be changed into herds of vampires! We shall see renewed the creation of Cadmus, if ever one is to say, on the stage of real life,

I am ready to add another to the long and dark list of victims, who are first polluted, and then sacrificed, by the blindness and injustice of human codes!

Of all the fatal causes of the inefficacy of the punishment of death, this is the most fatal. The indolence, and the egotism of the rich, and the carelessness of the whole of them, who are, in any way, distinguished from the great bulk of the people, have thrust an axe into the insensible hands of the law, to strike indiscriminately the wretch and the wretched, who dare to pass over the line, which separates the two sorts of people. They also, who infringe the laws, are men, and the work of the same Almighty hands with us; that is, worth being taken care of! Let us have suitable places of confinement: let them, who have committed less atrocious crimes, be separated from them, who have perpetrated the most atrocious deeds; and from the former, them, who have offended society in a less measure. Let the penalty of infamy fall upon the perpetrators of infamous actions alone! Let the passionate man be separated from the wicked; the guilty from the infamous criminal; the young from the old offender: then, I feel confident, we shall be able to deter men from crimes, without murdering them! But as long as prisons are kept in the inhuman condition, in which they now are; as long as they indiscriminately reflect infamy upon the whole of them, who have been confined, and cause them to be avoided by all classes of people; as long as society can offer them nothing else but indiscriminate infamy and inevitable starva-

tion, they, who are released, will hold crimes the sole means to get a home, and alas! to obtain that death, which they are forbidden to inflict upon themselves, and from which after dated innocence and even virtue are unable to preserve them.

My Lords, it was the turn of a straw, which made me what I am * * * * * * * * * * *you wronged me yet more deeply when I was sentenced to herd with hardened offenders, and graduates in vice, and vice's methods of support!* This explains why the piety of Elizabeth of Moscovia, and the efforts of an Austrian Prince proved unavailing to erase from our penal codes the punishment of death: they abolished the punishment of death, but left untouched the fatal ladder, which, step by step, the juvenile offender is forced to ascend till he reaches the scaffold!

I repeat it again in our present state of civil society, it is necessary, either to humanize the whole of our criminal laws, or to render them still more cruel! Cruel laws might prove less inefficacious to prevent crimes, if uniformly cruel. Such as they now are, our criminal laws recommend and require the most atrocious crimes. Such criminal laws, as we have imposed upon ourselves, though they may cause the half of the human family to be butchered, will never make legal assassinations an efficient punishment to deter men from crimes: nay, the law, by means of the punishment of death, sets the example of the cold and calculated assassinations, which, neither personal interests, nor the unhallowed passions urge; and thus

make the pernicious effects of the punishment of death to become the invincible causes of the most atrocious crimes.

CHAPTER THIRD.

Pernicious effects of the Punishment of Death.

When I heard it sad; "hang them up! hang them up! They will have done!" I, indeed, hate our means of perfectibility, and the perfection, which arts are caused to reach by the contrivances of civilization; because they have contributed to blind human intellects, by presenting to a man's eyes what nature intended to have for ever hidden from him, his own likeness! I speak of the instrument of our foolish vanity, a looking glass! The bloody tyrant looks with complacency upon the living portrait of a monster, the sight of whom fills the innocent with terror! A lusty anchoret carries concealed under his hypocritical garment the instrument, by which he is caused to lose his natural aptitude to read the features of deceit in his countenance! By it, an assassin courts his frightful disguise; and a silly old maid jolts in a spasm of joy, in beholding her coquetish look! And I! I shudder with horror, because the perfidious instrument makes me behold a likeness resembling them, who thus spoke! I must behold my likeness, then to scorn human nature. I abhor my immortality,

when I think that I hold it in common with them! I hate our religion, I despise the holy writings, I mock the solemn voice of the ministers of the gospel, if I but persuade myself, that they, who wish for the destruction of fellow beings, are to sing for an eternity the praises of our Maker! Is it to deceive them, I exclaim, that men are required to meditate upon the writings of the Apostles? Is it solemnly to mock the people, that they inculcate, not to do to others, what we wish not done to us?

I cannot, and never shall, be a by-standing listener, when so little care is made of the life of fellow-beings. It is but a few days since that I was in that predicament! Hang them up, said one, and the others applauded! Hang them up! They will rob no more! I have no mercy upon them!—I startled, and ran off like a reprobate, whom the thundering voice of the confessor drives out of the mansion of the Lord!—And when I had collected myself in my room, and secured the door, I threw myself upon a chair, particulating; is it possible that beings, who claim to bear in their countenances the likeness of their Maker, can have so much ferocity abiding in their breasts? Is this deception, blindness, or a fatal perverseness, that instils into our hearts the sentiments of destruction? Is it possible that one may wish for the death of a man,—unknown to him, who has never offended him; who never wronged him; who will no longer be able to wrong him? And those beings too, whom the Almighty created weakening man's side, (thus manifesting that man shall but yield to the gentle empire of the being, that

is part of man,) in order that they might mooth his unruled passions, and sooth his unyielding sorrows! These same beings, alas! wish for the destruction of men? The beings, whom nature teaches the rudest barbarian to respect?—Either I am widely mistaken, or all that is the fatal effect of the example of cold ferocity set by the law, which commands legal murders.

"In proportion," thus speaks Beccaria, "in proportion to the cruelty of the executions, human minds, which like the fluids put themselves in equilibrium with the surrounding objects, become hardened!" We become familiarized to any thing; and too many there are, in our days, who would sing the fall of Troy at the appalling scene of another Rome burning! I, indeed, should but hate man, were I to suspect, that such sentiments dwelt in his heart from birth. Ah no! let us cherish our best feelings; let a ray of hope gleam over this gloomy scene! We cannot be calculating and cold destroyers of our fellow-beings, unless the fatal encroachments of human interests, and the selfish passions, which arise out of the corruption of civilization, harden our hearts. They dread the laws, who think it their duty to echo to their ferocity, even in spite of better feelings, which dwell in their hearts!

"The punishment of death is not useful (says Beccaria; it is pernicious, I say), for the example of atrocity, it offers to men. If passions, and the necessity of warfare, have taught men to spill human blood, the laws, which are deemed to direct the conduct of citizens, should not add to those cruel examples, the

most cruel, as the death is, commanded by the law, and inflicted with so much cold-blood and ostentation!" (11)

(11) These words of Beccaria would account for the stoycism, which certain criminals evince at their trials; though the following paragraph from a news-paper makes literally evident the causes of it. § The conduct of the criminal throughout, whilst he was preparing himself for his departure from the prison, and during his stay beneath the scaffold, was unflinching, and manly to a degree worthy of less ignoble death. § Those Editors of news-papers, who indiscriminately bestow praises upon the barbarous coldness, and feelingless conduct of the politician and the murderer, the judge and the executioner, are an efficient cause of that savage stoycism! The foolish admiration of the spectators is one of the efficient causes of the unflinching conduct, which the most perverse of human beings show, in order not to appear wanting in courage! The placid unconcernedness of those, who bring in a verdict on which life, or death hangs, forces the culprit to show that courage, which indignation can cause to rise in any human breast! Finally the barren face, and feelingless voice of the judge, are the cause of that wrechedness, which our degenerated people call courage; because the criminal forgets his crime while indulging a feeling of hatred against the man, who appears to wish for nothing else, than the pleasure of shedding a man's blood!

Every body, who has read Roman History, knows, that the gladiators, although equally doomed to death whether conquerers, or conquered, yet aimed at the applauses of the spectators by a show of courage and contempt of death; so much power the love of praise exercises in human breasts!—Every man, who feels not the want of praise, is a contemptible wretch; or he is unconscious of his better nature! He, who despairs to deserve praise, resorts to crimes; but he, who lives with the fair hope of deserving praise, feels not disappointments, and ardently meets hardships in behalf of them, whose esteem he aims at deserving! Thus if the criminal also aims at

Beccaria says that the sentiments of every one upon the punishment of death might be read "in the acts of indignation and contempt, which every body shows to the executioner." I have very often been tempted to add, that the sentiment of the injustice of the punishment of death might be recognized in the feeling of hatred, which the breakers of the laws show for the Judge. No body will deny, that such hatred is a pernicious effect of the punishment of death, since it is directed to one, who had no part in enacting the law. Because the injustice of any thing renders him hateful, who meddles in it? If criminals say: *your laws are but of two classes: the one makes criminals, the other punishes them:* they will feel no regret for having infringed the laws: since they have offended that class of people, who only approach them, when they stand between the prison and the scaffold?" "Judges and scaffolds have become the necessary means to the maintenance of civil society!" Crimes are the only means of revenge within the reach of the poor! (12)

praise, it arises out of human nature; if he obtains it, it arises out of the corruption of society, the want of morals, the injustice of the laws, and the selfishness of statesmen!—Discipline, and morals, not preached, but resulting from good habits, should determine the mode to obtain praise; and then the wicked would have no hope of obtaining praise.

(12) Let us turn our eyes to the people of England, and behold them naked, and hurried to prisons and scaffolds!—They commit crimes, because that is the sole means within their reach to obtain a revenge against the few, who oppress the many! Montesquieu observed, that they could not find a republic, because their

Add to it the fatal certainty, which the poor entertain of being able to embitter the enjoyments of the rich by crimes, which are punished with a death, whose pangs are in no way comparable with those of reproach—less starvation, and then, alas! we shall perceive that society leads men to hate labor and to love

chiefs were void of virtue; that is true also; but the principal reason is, that the government has been bought by the few, and the great mass of the English nation, though a worshipper of virtue, is kept in perfect slavery by the few; and when one rises to plead the cause of the nation, he does so to set a price upon himself, and then be bought by the few. The few are so well secured in England, that the people can but kiss their fetters, or die upon a scaffold. They might, it is true, free themselves from the present oppression, but not by means of leaders, as they have done till this day! The King is the only man, that can save them; they must make him a Cæsar, if they wish to fly from starvation, jails, and scaffolds. The English nobles, or better the Norman Barons, have organized a tyranny, never heard of before; and none but a Napoleon would find the means to free Europe from the contagion of a government, which proclaims freedom, and rivets chains upon both the mind and the body.—May France never go to war against England, and never offer her a pretext for war. May France carry her invincible arms into Austria, and dismember that chimera of history, and be the sincere ally of aggrandizing Prussia and the recovering Turk! May she always shrink from carrying arms near the seas, and England will feel the hand of the great man, she buried in the depth of the atlantic, to shake the throne of universal tyranny! May Ireland decline sending her representatives to England; may her people be friend and ally to the common people of England, and the great throne of universal despotism will be caused to fall; and Ireland, England, and all the nations of Europe will be able to eat a morsel of bread, not drowned in human blood!

crimes. An abrupt departure from life, when the whole of the faculties of the criminal tend to perfectibility, a state so repugnant to the impending annihilation, will ever prevent the victim of the law from feeling, or even admitting the justice of the punishment, which awaits him! And if so it is? Who, a lover of his kind, will not shudder at the idea, that a criminal might exclaim with Clifford!—"I hesitate not to tell you, my lord Judge, to proclaim to you, Gentlemen of the Jury, that the laws, which I have broken through life, I despise in death." Would this not be more advisable, to take from the wretch, who inclines to crimes, the fatal hope of putting an end to both, his mortal career and his sufferings, by means of crimes? I ask no mercy for the poorest and the most numerous class of society, when I insist upon having the punishment of death abolished; it is our own interest, which would require the wretched part of the community to be deterred from crimes, by the aspect of a greater wretchedness awaiting them. Let them have the practical example of it, and then for the sake of the least evil, they will be made to reconcile themselves to their wretchedness, rather than meet a greater one, which life alone can measure.

"Ah! (it is Beccaria, who speaks) Ah! they will say (on seeing the indifferent tranquility of wise magistrates, and austere ministers of the Gospel, who join the slow procession of death;) these laws are but the pretext of force. Those long before calculated and cruel formalities of justice are nothing else but a sort of language agreed to, in order to offer us, with more

security, as the necessary victims to the insatiable idol of despotism. We behold assassination, which is decried as an horrible misdeed, to be continually resorted to, and without repugnance, or predomination of passions, by the very same persons, who decry it! Let us avail ourselves of the example!—a violent death appeared to us, on hearing of its appalling descriptions, a horrible scene of sufferings, but now we behold it to be the transaction of an instant. (13) How much less its pangs will be for him, who, unconscious of its approach, suffers not what a more painful death carries with it?"

It would be an unlooked for task to attempt to prove, that the great mass of the people do, in fact, make such speeches; although this must be the case, that men, for the mere fact of living in a state of civil society, will be led, by the progress of time, the repetition of the same acts of ferocity, and the habits resulting from both, thus to think. And, if men fear not the punishment, and abhor the law, which establishes it, we have no reason to apprehend a greater moral evil from the punishment of death!

The repeated spectacle of executions must produce the same effect upon the multitude that a battle-field produces upon soldiers. The soldier accustoms him-

(13) I intend not, however to advocate secret executions; because this would lead to prevarication, would proclaim the injustice of the punishment of death, and change it into a wanton tyranny; since nothing can be held to be a punishment, but what tends to deter others from crimes by means of the example.

self to eat the hard-earned bread of desolation amidst, and sitting over the sculls of the enemy, and those of them, who few days before partook of the same meals; and this enables him to acquire the undaunted ferocity, which obtains the laurels, that never are permitted to girdle the forehead of the philanthropist, and the benefactor of the human family. "I have been enthusiastic," says Lewis Bonaparte, "and joyful as any other after a victory; but I also confess, that the sight of a battle-field has not only struck me with horror, but even turned me sick: and now that I am advanced in life, cannot understand any more than I could at fifteen years of age, how beings, who call themselves reasonable, and who have so much foresight, can employ this short existence, not in loving and aiding, but in putting an end to each other's existence, as if *time*, did not *himself* do this with sufficient rapidity! What I thought at fifteen years of age, I still think—wars *with the pain of death*, which society draws upon itself, are but *organized barbarisms*, an inheritance of the savage state, disguised, or ornamented by ingenious institutions and specious eloquence." "*Be thy Mother one thousand times blessed*," I would exclaim with Virgil—Ministers of the Gospel, is the arœna of true Christianity beholden by you?

It is owing to the uncautious warfare of the ruling portion of civil society against the ruled mass, if we behold now the greatest ferocity to pervade human minds!—They are too few who wish to behold a man in the wretch; they are but too few, who think, (were it at least in the churches,) that the wretch shall sit

beside them, if our life is not to end in this world? (14) And that tyrants and their victims may equally dread to curse their life for an eternity?

Scaffolds are made for the poor and the obscure, and for those, who sincerely plead the cause of the people. The poor and the obscure cannot be made to reflect infamy upon their relatives; wherefore they merely have to dread the axe of the law. They fancy the pangs of an abrupt, but speedy death, and then compare them with the long and inevitable sufferings of poverty, and choose, alas! the shortest torment, whose acuteness is compensated by its uncertainty, or even the hope of escaping it, added to the alluring prospect, which crimes lay before them, who are destitute of every thing.—For a still greater fatality they constantly see Legislators, Judges and Magistrates to constitute one ruling class, who frame and execute the laws, who build prisons and raise scaffolds. This is the material cause why the poor so unchristianly hate the rich!—The great bulk of the people hate the rich, because of the comparison of their different circumstances in social life, and because of an abrupt death, of which they live in the sad expectation, and which, being ordered by men of almost different natures, appears to them inevitable! This alas! is the cause why the poor attempt to offend the rich by their crimes.—

(14) If the moral certainty of a future state should be caused to fly from human breasts, wretched humanity! what would prevent men from drinking one another's blood? We shall be a new descendance of Ædippus, if God is not to punish them, who transgress all the laws of nature in this earthly mansion!

Our laws have even succeeded in separating women from men; and they, less corrupted than we are, wherefore more despiteful, ascend unshaken and unmoved the fatal ladder, in order to satiate the beastly rage of their imbecile tyrants. They alone have shown the courage necessary to despise the untimely aid, which modern christianity only offers to them, who are to live no longer.—And all that to the utmost scorn of justice and humanity; since women are holden weaker and even inferior to our sex, when they are to be called to enjoy benefits in common with men, although we generously hold them equal to us, when they are to suffer the efforts of our tyrannical feeling of supremacy.—The great bulk of the people call themselves the sovereign, though their throne is the scaffold; and so it must be, because they deem themselves to be those, who enact laws; but the fair sex share in no way the sovereignty of the people, wherefore they cannot be caused to suffer death; not even by the specious pretext of avowed folly, because they made not such an avowal!

The power of habit is great upon all animals, especially upon men, and more so upon that class of men, whose minds are less educated to mental speculations: wherefore, these men (who perceive, that all men must die; and that they, who are poor and honest, though living in privations, are to die in want, and to be neglected in their life time, and held in contempt after death, when their corpses involved in rags are scarcely allowed the sole property of the poor, a span of earth!) will, perhaps, resort to crimes; because

they hope, by them, to free themselves from poverty and want, without accelerating, methinks, their final hour.

Let experience undeceive us! and this for our own sake. It is but vainly, that we expect to inspire, by means of the punishment of death, the dread of death, in the breasts of them, who either live in idleness, or apprehend to die of starvation. How truly Beccaria exclaims: "but he, who sees before him a great number of years, and perhaps the whole course of his lifetime, which he should pass in servitude and pain, beholden in such condition by his townsmen, with whom he now lives free enjoying their society, a slave of the same laws, by which he is now protected, makes a useful comparison of this expectation of an inevitable punishment with the uncertain issue of a crime, and the brevity of the time he might be allowed to enjoy its fruits, and reconciles himself, etc." His heart must be hardened, who exclaims not, in recalling this passage of Beccaria; is it possible, that the possession of riches can harden our hearts, and make us the enemy of those, who possess nothing?

I never could satisfy myself why the French philosophers resorted to satires, scholastic argumentations and slanders, in order to impeach the holiness of our religion. Is it not, that the Ministers of the gospel show, more practically, that our religion, though divine in its origin, may be perverted by men in its practice? Do we not see, them, who pretend to preach, by their example, the love of all men, as our Saviour brought upon this earth, to assist to, and we

might say, to legitimate human sacrifices? But for our too boasted civilization, people, who only judge from the effects, exclaim; is it possible, that a religion, whose Ministers assist in publicly and coldly assassinating fellow-beings, be divine?

Prone, as we are to judge with all severity, and even with a kind of complacency, when we may condemn vices, which affect not us, we hold them barbarians and savages, who sacrifice their prisoners upon the altars of their insensible divinities; though unmindful, that in our civil (I mean polished) society we offer victims to the deified egotism of untrue civilization, and make scaffolds its altars! This difference is extant between the sacrifices of barbarians and ours. Barbarians sacrifice men, whose life they have spared at the risk of their own; we murder, by means of the law, men, who aimed not at the life of their sacrificers! Savages are under the predomination of passions, when committing those acts of cruelty; we boast of committing them, following the dictates of cold reason: savages sacrifice men, who being also savages, and as powerful as they are, might again attempt to take their lives, if let loose; we sacrifice men, against whose wickedness we have a thousand means to protect ourselves, since civilization lends us what is wanting to barbarians, houses, prisons and guards.

Why send Missionaries to the heathen, if we surpass them in crimes? Why do we not contrive to make Christians to practise the Christian religion, before we add numbers to those, who profane it?—And

they profane it, who say, almost in a tone of mockery, that all hanged criminals go to Heaven, because they are caused to know the time of their death; wherefore can repent, and consider the fatal ladder as the means to ascend in the presence of their, and our God?—This is the most pernicious of all the effects of the punishment of death, if it causes our religion to be less respected, and to be no longer the blessing of man in the misery of life!—who can without the quivering, with which tremendous voice of our Supreme Judge shall shake the hearts of the wicked, behold the cross and the image of our crucified Saviour handled by the robber, who proceeds repeating the words of a Minister of the gospel, intent to show him the gates of Paradise, opened by human sacrifices? shall we hear profaned, beside the victim of society, the name of Him, who restored his ear to Malcus? (15)

(15) One word more. I doubt not of the divine origin of our religion, if we practise it, as it was given. I wish, that all men followed the precepts of our religion, and held them to be corruptors of true civilization, and enemies to God, who dare thrust religion into the crimes of men: who make religion yield to the ambition of the few, to the passions of the many, and to the selfishness of every man. It belongs not to me to recall our living Davids from iniquity, although as a man, who belongs to our civilization, I say, that religion is not to be made to twist the rope, which destroys human lives. What difference can be made apparent to exist between human sacrifices and our executions. Both of them are consumed accordingly to laws. If barborous laws cause them to be called barbarians who enacted them, what are we?—If cruelty and ferocity of mind are contrary to the meekness and precepts of religion, what makes us unlike the Pagans?

Is it not a swerving contradiction to send Missionaries among the heathen in order to suppress their human sacrifices, and then make ours more frequent. Sacrifices the more abominable the less our present civilization requires them. Shall we free the Pagans from the sacrifices of barbarism, in order to subject them to those of civilization? A savage, who should behold one of our executions, would call it a sacrifice, if he beheld the Ministers of the gospel handling the victim?—kind reader, and you Ministers of the Gospel, do sympathize with my feelings, because I speak from my inmost heart. If I see too gloomily, do attribute it to my ardent wish to spare to our fellow-men the greatest portion possible of evils; No rancour or hatred is abiding in my heart; I yielded to my feelings, but my mind was perfectly calm; and if I have made my feelings manifest, it was because I doubted not, that your feelings correspond with mine. Let us bitterly deplore the present condition of our society, because of this pernicious effect of the punishment of death; and let us be united in our efforts to have the yoke of cruel and stupid laws shaken off by civilization.

Thus resuming, there are two pernicious moral effects of the punishment of death: it accustoms men to a savage's ferocity; and renders a divine religion a less positive guidance of them, who profess it.

The pernicious physical effects of the punishment of death might be summed up in the following sentence. It calls for the most atrocious crimes!

1st. One, in company and armed, commit, a rob-

bery on the high-way, he is punished with death: another under the same circumstances kills the whole of them, whom he has robbed; he cannot suffer a greater punishment: then the law tells the criminal —take life from them you rob, lest they should offer evidence to convict you! (16)

(16) The last maxim, which my undertaking calls me to combat, is this;—that the better to protect the life and property of citizens, the law affixes the punishment of death to all those criminal actions, whereby human lives might be endangered.

Indeed, I must wonder, and even confess, that I am unable to satisfy myself for the great contradictions, which civil society, and single individuals offer to the eyes of the observer.

If I look to the individual beings, who compose our generation, certainly, that no one has shown himself heretofore more worthy of his celestial nature!—Who of the ancients, not even Plato excepted, had conceived the moral enjoyment, which renders even misfortunes dear to us?—we only preserve that much of the physical nature, which enables the body to obey the impulse of our better nature!—Sensual pleasures are almost banished from among us; and the intellect alone appears to require food, pleasures, and relaxation. A learned divine of Boston makes our relaxation to consist in engaging our understanding continually; rest, in varying the objects of our mental speculations!

But if I look to a modern civil society, I behold the infamous chimera, which no one can subdue!—*The few, who move the screws of the machine*, have succeeded in bewildering our minds, whenever we are called to act collectively. The best generation, that ever lived upon earth, if we act individually we become the most perverse, if we act collectively—Nevertheless we are not wicked: we are indolent—that is all our fault!

One would observe that Walter Scott should be held a philanthrophist, because he employed, by his writings, many more men, than

2d. One, who armed, violently enters a dwelling house and steals property, shall suffer death; so shall he, who, besides, kills all its inmates.

3d. One commits one single crime, he is condemned to suffer death; another commits one hundred crimes: he had the faculty to commit ninety-nine after the first, because our laws can punish but one atrocious crime.

4th. One waits for another and deprives him of life, he shall suffer death.

But he killed ten persons; well, the law punishes

any man has ever done heretofore? We all would believe it, rather than take the trouble of noticing how many more men, he has made idle by means of his novels. The press is a great benefit in a state of civilization, yet all what has to pay for it must be produced by lands tilled, (because commerce itself depends on the products of the land,) and if we maintain not agriculture in a flourishing state, our descendants will be as ignorant as the Goths, if we leave them well printed books, and untilled lands!

Thus we say that the law protects lives by menancing with death even him, who aims not at another's life, while we should consider that the law values not the lives of innocent people, since it inflicts the same punishment on him, who slew none, and on him, who slew ten of them.

A proof more, that we are not naturally wicked, and that, notwithstanding our crimes and vices, we may be esteemed good is this: we have very few robberies, where life has been taken from the person robbed!—Yet our laws are so inconsistent, that they command the criminals to destroy the life of any one, they rob; because they cannot incur a greater penalty, and take from the world those, who would pursue and convict them. Inasmuch that we may hold human nature to be better in those, who infringe the laws, than in those, who impose upon us inconsistent laws!

the first murder; he was entitled to commit the others. He killed a person, who had offended him!—Let him die—He killed his wife!—he shall be put to death—Nay he killed a stranger; nay he killed his son—his Father!—no matter let them die—Nothing is held to be sacred in a state of civilization! The ties of nature, and those of domestic life, are mere prejudices of *illiterate* civilization! To stab one, who has offended us, and to plunge a greedy dirk into the heart of him, to whom we owe existence and condition, and the means to enjoy life in this world and to attain everlasting happiness in the world to come, are but indistinct crimes to the eyes of him, who lives in the happy age of the march of intellect!—Fellow-men, are we incapable of shame?

FINIS.

APPENDIX.

NOW THAT A KING, FRIEND TO MAN, AND TO LIBERAL INSTITUTIONS, SITS UPON THE THRONE OF CIVILIZATION, AND THE VETERAN CHAMPION OF LIBERTY GUARDS A THRONE, RISEN BY THE UNIVERSAL CONSENT OF A GREAT PEOPLE, WHO LEADS ALL OTHERS IN THE PATHS OF TRUE CIVILIZATION AND HUMANITY; NOW THAT A PHILANTHROPIC MAN, WHO WISHED TO MAKE PEOPLE HAPPY, HAS THE POWER OF MAKING THEM HAPPY; NOW IN FINE, THAT A LOVER OF MANKIND HAS BEEN CROWNED, WHO KNOWS HOW VERY TRUE IS THE LOVE, WHICH ONE PRESERVES TO MEN IN THE CIRCUMSTANCES OF AN EXILE: NOW, YES, IT IS HIGHLY GRATIFYING TO HAVE HOLDEN THE PEN, IN THE CIRCUMSTANCES OF AN EXILE, AND TO HAVE WRITTEN, IN BEHALF OF MANKIND, IN THE SAME CITY, WHERE LOUIS PHILIPPE EXPERIENCED HOW SOOTHING A BALSAM KINDNESS IS TO THE BITTERNESS OF THE EXILE; NOW, YES, IT IS HIGHLY GRATIFYING TO HAVE WRITTEN A WORK, WHICH, HOWEVER SHORT OF PERFECTION, WILL BEAR WITNESS TO MY SINCERE LOVE OF MAN.

I must first confess, that Mr. Rouchefoucalt was an occasion of a note for page 200 being swollen into the present appendix, in order to show what changes should be made in the penal code to make it conformable to Christian morality, constitutional govern-

ment, and the principles of humanity. I congratulate his country for having produced the sole man, that offered a premium in behalf of the poor. My circumstances have prevented me to work for the premium, yet I shall, in the best manner I am able, show how we may be Christians, by means of humane laws: wherefore I shall briefly speak; 1st. of the geometrical scale of punishments and crimes, as hinted at by Beccaria; 2d. of the prisons; 3d. of the accountableness of the breakers of the laws.

GEOMETRICAL SCALE. We must consider the differnt enormities of crimes, and the hypothetical intensity of punishment, in order to obtain this scale.

"Admitted," says Beccaria, "the necessity that men should unite to form societies; and supposing the existence of those covenants, which forcibly would have been caused to proceed from the opposition of personal interests, we meet with a progressive series of disorders, the highest term of which are those, which most directly affect society menacing its existence, and the lowest, the least injury done to an individual member of a society. * * * *
* * * * * * * * * * * *
* * * If we were able, by means of geometry, to submit to calculation and to demonstration the infinitely varied and hidden causes of human actions, and the relation which these actions bear to man, there ought to be a proportional scale of punishments, which beginning from the most intense one, to correspond to the greatest criminal enormity, should descend, step by step, to the least intense punishment, to meet the slightest criminal offence."

Beccaria, hower, has fallen here into the general misconception of civil society, saying, "the highest terms of which are those, which most directly affect society, etc." An absurd idea, that society is a moral being, vested with transcendent powers and rights, is the cause whence the cruelty and injustice of our criminal laws proceed. From what I have said of civil society in the punishment of death results, that society, as the legal representative of the rights of all citizens, set forth in behalf of one of its members, who, has been offended, and asks the indemnity that is to correspond to the

injury, he has received. Criminal laws are nothing else but the means, by which society asks such an indemnity; punishments are the measure of the indemnification to be given: magistrates represent the means, which correspond to the several rights of defence summed together.

It is the prevailing folly of our age to think, that we may prevent crimes, by making manifest all the contrivances of human wickedness, and affix a penalty to each of them! If it was my lot to give laws to an assemblage of men, I would be particularly careful in concealing from them a great number of the crimes, to which the corruption of the heart may lead men. I would make a law against murders, and establish the corresponding punishment, but I would take care not to let them know, nor even let them suppose it possible, that a man may be so perverse as to aim at his father's life. The different ties, with which nature and civil intercourse unite men, should constitute different enormities of the crime, which should be met by different exacerbations of the punishment for murders; and this scale of proportional exacerbations, I would cause to be deposited at the Supreme court, and to be opened only in case of qualified murders.

It was owing to that prevailing folly, if our penal codes are now replenished with laws astyrannical as useless; I mean the laws, which consider political crimes. A political crime either is perpetrated, or not; if it is not, there is no crime; if it is perpetrated, that society, which enacted the law, that relates to it, is unable to inflict the corresponding punishment. Besides, no one can perpetrate a political crime, without perpetrating criminal actions, which are punished by the laws relating to them. Wherefore, if the criminal actions through which one may be led to the perpetration of a political crime, are punished, he will be prevented from perpetrating that crime, if they are not, the laws would not be executed these, and consequently useless, whether they relate to civil, or political crimes.

Thus we must abandon the idea of preventing crimes, by the mere fact of enacting laws. The Romans had no laws against usurpation of power, yet the people, who were not corrupted then,

caused Manlius to suffer the fatal throw; there were enacting such laws, when the Decemviri required the multitude to mutine in order to dispossess them of the usurped power; they had such laws enacted, when SYLLA and MARIUS rioted for the empire of Rome: they had laws, when POMPEI CRASSUS and CÆSAR divided among themselves the government of the Republic. Florence had as many tyrants as laws were enacted against the usurpation of power. The French Republic was not in lack of such laws, yet they were never applied, except by means of a new violation of all laws; and so it is now with regard to responsible Ministers.

Moreover the injury, which may be derived to society from a political crime, will vary with relation to the political state, in which a society is: because, if the crime disolves that society, or changes its form of government, the perpetrator of it cannot be punished; and if it does not, the crime is not perpetrated, because it will have been prevented, by punishing the criminal actions, which lead to the perpetration of a political crime: and even admitting, that the crime should be perpetrated, the society will always be able to punish it, that remains unshaken. Thus the laws, which relate to political crimes are useless; and, whether useless, or not, cannot be made to make part of the penal code.

To suppose society to be a particular being existing of itself, and capable of receiving injury in its undefined quality of a moral body, it will always prove a great obstacle to establishing the geometrical scale of punishments and crimes. This supposition is an illustration of what I have said at page 186; *men, when once they have submitted themselves to the guidance of others, will naturally choose to be guided*; and it is in consequence of our indolence, that we receive the principles of jurisprudence, preserved down to this age of civilization, from people, we hold barbarians in all, except their barbarous laws.—Princes and Lords, holding themselves the masters of every thing, hoped to deter men from substracting any portion of their property by the severity of the punishment they inflicted upon them, who aimed at possessing themselves of it: such princes have become the rulers of nations, and

have consequently bequeathed their barbarous laws to us; whereby we are led to believe, that it is as great a crime to take a dollar from the nation, as to take life from a citizen. Such ideas are preposterous to civilization, and require not to be combatted, in times, in which every body knows, as well as myself, their absurdity.

Thus, the actions, which do another injury in his person or property, are criminal. The criminal intention of him, who perpetrates a criminal action, and the material injury that action causes, are the constitutent elements of crime. I shall speak, under the head of accountableness, of the criminal intention ; the material injury may regard the person, the property, or the condition of a citizen. The condition, (I mean, the ties, which nature has put between men, and which social intercourse requires, and civilization sanctifies,) should be made to increase the criminality of the intention.

A man may be injured in his person, in his property, or in both of them, thus we have three general divisions of crimes. The highest injury to the person is to take life; the greatest criminality of the intention is determined by the mode, and the condition of the assassin and the person assassinated. The condition is determined by the names of father, son, mother, daughter, husband, wife, brother and sister; the mode is determined by the predomination of passion, the circumstances, which might have impelled to the crime, the means of, and the deliberation in, perpetrating the misdeed. The slightest personal injury will be to strike another, without any material consequence, with the hand, in a fit of passion, occasioned by verbal abuses.

With regard to things there is no other criminal intention, but what is shown by the contrivances to the perpetration of the crime. Wherefore the quantity of the property stolen, or damaged, will be the measure of the extent of the injury; the difficulties to be evinced, in order to have that property stolen, will show the criminality of the intention. To contrive to steal a large amount of property, well secured, and to succeed in stealing it, by means of many contrivances, and a long period of time, will measure the highest crime

of this kind; to steal a trifle, met with occasionally, in a place unguarded, the least.

The third class of crimes might be considered as a composed criminality of action; that is, each crime of this class is a compound of two criminal actions, either perpetrated at the same time, or one occasioning the other. Wherefore I would make punishments also to be composed; that is the criminal should suffer the punishment that corresponds to the most criminal action, and have added to it the half of the penalty, which would correspond to the minor crime, as far as the nature and the atrociousness of the offence might admit of this composition of penalties.

I have spoken, in the beforegoing work, of the offences done against the moral and civil standing of man, thus I shall not speak of them in this place. Fraud and deceits would measure different degrees of criminal intention, and I shall speak of it in its place.—Forgeries, I believe, would be classified with the offences done against the property of another; and would be submitted to the measure of thefts.

Punishments. Physical labor and moral bearings are the elements of punishments: labor increased to cause pain, privations, and infamy constitute the moral bearings: privations consist in depriving the criminal of the liberty to make use of the means as correspond to man's rights; labor, in compelling him to make use of these means in behalf of society. *Death* is not a punishment; 1st, because every one, that lives, shall die; 2d. because, by it the offender is caused neither to bear nor to work, since he exists no longer, who is subjected to that punishment. Labor, hard labor, and the condition, in which the breaker of the laws is placed, constitute a punishment. The condition is physical, or moral; fetters, chains, weights, etc. bear relation to the physical condition; the privation of liberty, the qualities of the place, where he is caused to work, and the marks, which he would bear on him, regard the moral condition of the criminal.

The Lord himself shewed which was the most wretched moral condition of a criminal; we know, I think, which is the worst phys-

ical one; if those two conditions are composed together to last for the whole lifetime of the criminal, we behold the greatest punishment. Moderate labor, and simple confinement, for a very short space of time, would constitute the least punishment. The simple deprivation of liberty, for a short period of time, would not be punishment; because such confinement, although it takes from the person, who is there confined, the ability to offend society, yet does not force him to indemnify society.

PRISONS. A commonwealth should have two prisons, or houses of correction, three jails, and a work house.

The first prison should be a building with two apartments, one for each age. (see accountabless) Its inmates should be subjected to no other inconveniency, than the privation of liberty, and the necessity of conforming themselves to the discipline of the house; those, who, either by yielding unwarily to occasions, or in consequence of passion or age, have made themselves guilty, for the first time, of actions, which are deemed to disturb public tranquility, should be confined in this prison.

The second prison should be divided into three buildings, and each building into two appartments; one appartment for each age. The regulations, which constitute the discipline of this prison should be more strict, than those of the first; and its inmates should be submitted to mechanical works: the recidivous perpetrators of the offences above spoken of should be confined in the first building; the idle, in the second; those addicted to intemperance, in the third.

The first jail should be in its distribution of building like the second prison; in this jail should be confined those, who have committed an offence either against the person, or the property of a citizen, when the extent of the injury be inconsiderable, and the action have been perpetrated without premeditation. The perpetrator of these actions should occupy the first building: those, who are besides, idle, should be confined in the second; those, who being addicted to intemperance, have committed one of these criminal actions, in the third.

The second jail, similar to the first, would serve as a con-

finement for thieves; young thieves, whether young people, or men, should occupy the first building; those who have shown malice in the perpetration of the crime, though not to such a degree as to make theft a qualified crime, should be confined in the second building; those, who have committed a theft of the same nature of those of the first building, but are idle, or addicted to intemperance, should be confined in the third building. A thief, who has shown malice in the perpetration of the crime, but was entirely destitute, and had a family to support, should be confined in this third building.

The third jail should not be different, or but little, from the other two: the first building for recidivous young thieves: the second, for recidivous young thieves, who are either idle, or drunkards: in the third, old offenders, counterfeiters, and those, who are blackguards, and do another offence in his person, whether in the street, or in a public place.

N. B. A fourth building, with the same regulations of the third, should be added to the second and third jail, for those, who have committed personal offence, whether in the good name, or person of another.

I believe that society would rejoice, if prisons should supply it with good citizens, after they had freed it from the annoyance of the ill-inclined; wherefore activity should be the animating spirit of all places of confinement. In the prisons, their inmates should have two hours recreation for every two hours work; in the jails, one hour recreation for every three of work. Those, who are confined in the second prison, or in any of the jails should pay the amount of the expense for keeping them by means of their earnings in the place of confinement. The inmates of the prison should choose their occupations, provided they are enabled by them to pay the amount above mentioned; the inmates of the jails should make those earnings by substantial mechanical works; and what they earn above the amount for the expense of keeping them, should be divided into three portions, one to remain in their keeping, providing, however, that they would usefully dispose of it: another to be deposited to make a fund, which should be delivered into the hands of the prisoner, on his being released; the third should remain in the

hands of the managers, for to afford the prisoner those little commodities, which the preservation of his health might require: however, the third portion also, or what remains of it, should be added, at the end of every six months, to the fund for the prisoner.

Prisoners should be allowed, if they deserve it, to work the half of the time allotted for recreation. Their recreation, in the apartments, should chiefly consist in talking, and playing checkers, or chess; in the yards, in practising themselves in gymnastics. They should study, learn to read and write: but the instructers should be chosen from among the prisoners themselves, in the same place of confinement. They should attend divine service on Sabbath day morning, and hear a sermon on practical morals in the afternoon; but they should not be allowed to have bibles in their keeping: they should also attend reading and writing on Sundays, and hear reading of history, or explanations of geography, mathematics, etc., this in proportion to the means of instruction, which the quality and informations of the prisoners might afford.

The Work-House should be divided into three buildings: the first for them, who are to be kept from five to ten years: the second, for those from ten to twenty: the third, for those for life.

The first building should be composed of two minor buildings, and each building should admit two partitions of apartments: the buildings should separate those, who have committed offences against the property from those, who have committed offences against the persons; the partitions of apartments should correspond to the two ages: a subdivision of apartments should separate those, who have committed a crime with cold deliberation, or in consequence of habitual idleness and drunkenness, from those, who perpetrated a crime yielding to passions. The labor of this building, although hard, would not impair the health of the prisoner, nor cause his physical strength to be diminished; the prisoners would be allotted two hours recreation every day, they would have regular meals, and their work would never begin before sunrise, nor be extended after sun-set: when working, they would not be exposed in sight of all people; they would be permitted to work the time of recreation, and three hours on the Sabbath day, and their earnings would make

a fund to be delivered to them on their being released from the house. They would wear light fetters, and the chain which unites them, be long enough as to allow them a quite regular step; they would be secured to a chain in their births; both hands free, and one leg also. On the Sabbath day, they would attend divine service in the morning; then, besides their three hours work, they would be taught a mechanical art, or any study, which might benefit the former condition in life of the prisoner; with the condition, however, that teachers must always be taken from among the prisoners of this building.

The second building should be made to consist of three minor buildings, and each building, divided into two apartments: one building for the crimes against the person; another, for those against the property: the third, for the crimes against both, the person and the property: the first age would be permitted to learn a mechanical art on the Sabbath days. The labor would be harder, than that of the first building, they would work for the state out of the house also, but not in sight of the people; they would, a few by turns, be submitted to hard labor in sight of the people, one day of the month; such a spectacle ought not to be led before the public more than twelve times a year, and be calculated so, as a prisoner should not work in sight of the people, more than once a year. The inmates of this building would be allotted an hour of every week day, and three hours of the Sabbath day, for their own benefit: the half of their earnings would be deposited, to make a fund, to be handed to them on their being released from the house; the other half would be passed to the funds of the house of industry in the state. Their relaxation would be rest and silence. They will wear heavier fetters, than those of the first building; the chain which unites the fetters would be shorter, than that for the first building; they would be secured in their birth to a double chain, fetters on, and both hands free. On the Sabbath day, they would hear a discourse: they would keep silence, all in the same apartment, one hour in the morning, and one in the afternoon; the other hours, except those allotted to work, would be spent in their respective apartments, and

be allowed to converse. Meals time should be passed in silence in both, the first and second building.

The third building would be divided into apartments. Those who have committed murder in a person allied to them, would be the whole of them in one apartment; each of them in a small cell; when retired they would have their fetters on, bolted in both sides, and secured to the wall, and only one hand free. They would never hold together, except on the Sabbath day, on which day the whole of them would be led into one apartment, in the same condition, in which they go out to work: they would hold together three hours of the morning, and three of the afternoon; the two first hours to be passed in perfect silence, and on the third, one of them by turn, would speak of his crime and his iniquity. Their labor should be the hardest, their fetters very heavy, the chain very short, when they are carried to work, their hands should be secured by a chain, they should carry on their left arm an iron ball, secured to a chain fastened around the body; they should always wear on their forehead the mark of their crime. When at work, their hands should be untied, and the ball left trailing on the ground; they should work in sight of the other criminals, but always held every one by himself; they should never pass through the streets of a city, or town; and one of them should be exposed, on a certain day of the year, in a place of concourse, in the same apparel, in which I have described them going to work. However, they should be decently fed, and not caused to sink under the excess of labor: when unwell, they should keep their cells, and another murderer, of the same class, should be secured to a long chain, without the cell of the sick prisoner, in order to wait on him. Servants of the house should not be required to wait on any such monster, unless they should willingly do so; and happy those monsters should be, if they would show such a repentance as to make a servant of the house incline to wait on them.

There should be *another* apartment, for those, who have committed more than one wild murder; they should be kept in the same manner, as it is above stated for murders against persons allied to the murderers; except that they should not wear a mark on their forehead, the chain of their fetters should be half an inch longer, the ball half a

pound less in weight, and their cells should be made to hold two of them; at work they should be held together, and in their cells they should be secured to a side wall, yet be allowed to move in their births; they should attend divine service in the same room with those of the third apartment; then retire to their cells for the rest of the day.

The third apartment for atrocious murders, and for robberies, or violent thefts and consequent loss of lives. Their fetters should be secured to a chain half an inch longer, than those of the second apartment, the ball a pound less heavy, and should carry it with one hand, their hands untied; their work as hard as for those of the two first apartments; they should keep along partition in the same apartment, when retired; a chain fastened to their bodies and secured to the wall, would prevent them from quitting their birth, althought it would allow them to turn in it; one hand alternately free, and the other secured by means of a light and quite long chain to the fetter of the opposite leg. On the Sabbath day, they should attend divine service in the morning, and hold together an hour, in perfect silence, in the afternoon. They should be allowed to work, this at their choice, the rest of that day: one third of their earnings should be in the keeping of the Managers, and would serve to procure them some trifling relief, when unwell; the other two portions would make a fund to be disposed of in favor of any person, whom the prisoner should designate. It would, perhaps, be advisable to let them work an hour every other day, with the same conditions, as for the work on the Sabbath days. When sick, they should be brought to the infirmary of the house, with those of the other buildings; their victual, healthy, and their health taken care of, as far as their condition should allow it; working, they should keep together; and some should work, by turns, in sight of the people; but each of them only three times a year, and always in small parties; such spectacle, should not be offered to the people more than three times in the course of two months.

In-guards and servants, for the whole house, should be chosen from among those, who are released from the first and second buildings; the laws might establish the period of time, for which the released are to serve in the house; many would serve through choice.

Neither servants, nor in-guards should be allowed to go without the house.

The inability to pay a debt, when it arises out of poverty, supposes not criminal intention in the debtor, unless it is supposed in poverty also; wherefore I know not for what reason a special prison should be built for the poor, except an alms-house. Prisons are calculated for those, who have perpetrated actions, which do injury to another; and, if poverty is guilt, life must be a crime.

Women who have committed crimes, should occupy an addtional building in the second prison, and in each jail, they should not be confined in the first prison, nor even be sent to the work-house.

ACCOUNTABLENESS. The age of the guilty, the means to perpetrate a crime, and the contrivances for its perpetration, are elements of the accountableness of criminal actions; the mode of convicting the guilty makes the criminal accountable; the actions of the criminal, preceeding or following a criminal action, the behaviour of the criminal before, after, and when about perpetrating the criminal action, and the eye and ear witness to the perpetration of the crime, constitute this mode.

Age. Two ages should be distinguished with regard to committing persons indicted for crimes: the first from fourteen to twenty years: the second, from twenty to seventy. With regard to prisoners, one age begins at fifteen and ends at thirty-five years; the seccond, at thirty-five, and ends with the life of the person confined. Women and young men from fourteen to twenty years of age should be held equally accountable: that is, a criminal action with them is a misdemeanor; a crime, is a criminal action: an atrocious crime, will be a crime. They should never be sent to the work-house. Young men should be, if they had perpetrated a murder of qualified condition, by their own contrivances, and without the concurrence of another person in the perpetration of the crime. Those who lead women or young people to, or assist in, the perpetration of a crime, should be punished as principal criminals. *The means* must be such as to render the accomplishment of the criminal intention possible, in order to make the guilty one accountable for the crimin-

ality of the intention in perpetrating the crime. The contrivances are those actions of the criminal, by which he provides the means for the perpetration of the crime, and causes the opportunity to perpetrate it not to fail him.

To make a person accused morally accountable for a a crime, his actions should be taken into consideration, and his behaviour: actions may bring to a moral certainty the guilt of the person accused; behaviour cannot; but, even the actions must bring to the moral impossibility, that any one else but the accused have perpetrated the crime; in order to have him convicted. With regard to witnesses, their particular qualification should be determined by the laws. The moral satisfaction, that one is guilty, and the legal conviction of the person tried, should cause him to be convicted; without these two convictions, laws will ever be apt to punish innocent persons, and to let loose criminals. This is the inconvenience of the trials by jurors. The laws should never let loose one, whom no circumstance declares innocent, as they should never condemn one, whom all circumstances concur not in shewing to be guilty. The Danes and the Normans were very fond of trials by jurors, because thus they had their subjects executed by means of other subjects. The *Pisani* called their judges from a foreign country in order to have justice impartially administered; and, indeed, this must appear contrary to human nature, that we should meet with twelve men, unaccustomed to administer justice, who would weigh all circumstances and evidence, be able to guard themselves against the eloquence of the barrister, and not apt to yield to feelings; because this is the essential quality of laws, that they should never be made to yield to feelings. Besides this, owing to the press, we can never obtain, from any part of the country, in any nation, to sit as jurors, men, who have not made up their minds, before they are called upon, and impannelled in a jury.

Fraud arises out of the wish to obtain property; deceit, out of both, that wish and the intention to prejudice another: fraud regards the property of another; deceit, the property, the person, or both: the majority of the criminals, and the minority of the persons de-

ceived, measure the highest degree of criminal intention in him who uses deceit.

To hold boys, under fourteen years of age, as accountable as men, although it may suit the indolence of the English government, can never satisfy the mind of any one acquainted with human nature. A general guidance to enact humane laws, and to ameliorate the condition of all men, should be this; to do nothing of what England has done. There legislators, instead of attempting to prevent crimes, punish the perpetrators of them; parents, instead of taking care of their children, send them to school, or abandon them to the Sheriff; Ministers of the gospel, instead of guiding the people, by means of example, in the practice of the Christian doctrine, have as many bibles printed as English heads, and give one a head, in order that they may learn as much, sa they are able.

A gardner, with no other instrument than the knife, will always have a few trees growing majestically in his garden, though the grass and the bushes will be prevented from growing under the chilling shade of those trees!—Boys are taught to read, but they are never taught what they should read. News-papers always eagerly bear witness to human wickedness; and boys are occasionally taught to commit crimes, before they are aware, that they can be so perverse as to perpetrate crimes. Trials are too long to interest boys in reading the accounts given of them; wherefore they early receive in their forming associations of ideas the notions of human perversity, and found the ideas of crimes, confounded in their young minds, with those of virtue, religion, and duty; particularly so, because the ideas of virtue, religion, and duty, cannot in our days, be more forcibly impressed in their minds, than those of crimes: since they read of crimes, and hear of virtue, religion, and duty. Society must lead young people to virtue, in order to be entitled to punish men, who perpetrate crimes; otherwise, society should be held unjust, because it guides men to vices and crimes; and tyrannical, because it punishes those whom it led to crimes. We believe men to be born with a good, or bad tendency, because thus we spare ourselves the trouble of making them grow good!—In 1819, a gang of robbers, at whose head

was a famous outlaw, by the name of Cavalli, was caught within five miles of Mantua, (Italy.) Their crimes requiring a *Giudizio Statario*, the court held its sitting in the open field, as near as possible to the house, where they had perpetrated their last crime. Cavalli, and two others of his gang, were tried, convicted and executed in the course of twenty-seven hours, as the law required. A few, among the great number of boys, who had assembled from the neighboring towns to witness the trial and the execution, convened together on the next day, and agreed to hold their sitting in the same manner, as they had witnessed it the day before. A stout and bold boy about twelve years of age, offered himself to perform the part of *Cavalli;* that is, he would go into a house to steal, and, if they caught him, he would undergo his trial. Some boys succeeded in surprising, and securing him; then, tied all round with ropes, he was brought before the tribunal: he was found guilty; and delivered to three boys, for to be executed. The three boys hung him to a tree, just in the same manner, as they had witnessed the operation to be performed on the preceeding day; and there he would have expired, unless one of the boys, who had sat a Judge, had gone to inform the mother of the prisoner, how things were going on. All the love of a mother was necessary to enable her to reach the tree in time, to undo the fatal knot, which, in a few moments more, had deprived her of an only son.—The power of example is great!

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